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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1961

No. [redacted] 33

CHARLES DOWD BOX CO., INC., PETITIONER,

vs.

JOHN F. COURTNEY, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR CERTIORARI FILED JANUARY 9, 1961
CERTIORARI GRANTED FEBRUARY 20, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960 1961

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[fol. 1]

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS IN AND FOR THE COUNTY OF WORCESTER

In Equity No. 122913

JOHN F. COURTNEY, THEODORE J. PLOTCZYK, CLIFFORD G. ALLARD, ROBERT P. PRENDIVILLE, JOHN J. KAVORKIAN and ROY STEVENS, Plaintiffs,

—v.—

CHARLES DOWD BOX CO., INC., Defendant.

BILL OF COMPLAINT—Filed September 9, 1957

Your Plaintiffs Respectfully Represent That:

1. The Plaintiff, John F. Courtney, is a resident of Worcester, County of Worcester, Commonwealth of Massachusetts and is the duly elected President of Local 5158 of the United Steelworkers of America, AFL-CIO (hereinafter called the "Local"), a voluntary unincorporated association existing under a charter of the United Steelworkers of America, AFL-CIO (hereinafter called the "United"), having its principal and general offices in the City of Pittsburgh, Alleghany County, State of Pennsylvania; the Plaintiff Theodore J. Plotczyk is a resident of Worcester, County of Worcester, Commonwealth of Massachusetts and is the duly elected Vice President of the Local and an employee of the Defendant; the Plaintiff Clifford G. Allard is a resident of Worcester, County of Worcester, Commonwealth of Massachusetts and is the duly elected Recording Secretary of the Local and an employee of the Defendant; the Plaintiff Robert P. Prendiville is a resident of Worcester, [fol. 2] County of Worcester, Commonweath of Massachusetts and is the duly elected Financial Secretary of the Local and an employee of the Defendant; the Plaintiff John J. Kavorkian is a resident of Worcester, County of Wor-

cester, Commonwealth of Massachusetts and is the duly elected Treasurer of the Local and an employee of the Defendant; the Plaintiff Roy Stevens is a resident of the City of Worcester, County of Worcester, Commonwealth of Massachusetts and is an International Representative of the United. All of the aforesaid Plaintiffs are members in good standing of the United.

2. The other members of the said Local and the said United are too numerous to be set forth herein individually, but the Plaintiffs herein mentioned fairly and adequately represent the interests of the entire membership of the Local and the United.

3. The Defendant is a corporation organized by law and located in the City of Worcester, County of Worcester, Commonwealth of Massachusetts (hereinafter called the "Employer").

4. The Local is a voluntary unincorporated association which is a constituent part of, and which exists by virtue of, a charter duly issued by the United.

5. The Employer employs approximately one hundred and twenty-three (123) employees in the collective bargaining unit represented by the Local.

6. For approximately two (2) years, the Employer and the United have had a contractual relationship with regard to wages, hours and conditions of employment of the employees within the collective bargaining unit.

7. Collective bargaining negotiations were conducted between duly authorized representatives of the Local and the United with duly authorized representatives of the Employer which negotiations concluded on May 21, 1957, on which date a stipulation was entered into by and between said representatives agreeing to extend the collective bargaining agreement then in effect until November 19, 1958, a copy of which Stipulation is annexed hereto and marked "Exhibit A".

8. By notice dated May 28, 1957, a copy of which is [fol. 3] annexed hereto and marked "Exhibit B", the Employer announced that the negotiated wage increase would

be paid June 6, 1957 retroactive to May 20, 1957, and thereafter made said payments.

9. On August 2, 1957, the United received from the employer a collective bargaining agreement signed by a duly authorized representative of the Employer, Dave C. Dowd, Vice President of the Company and member of the Company's negotiating committee, said agreement effective May 20, 1957 and expiring November 21, 1958 (Article XXIV, page 24). A copy of said collective bargaining agreement signed by a duly authorized representative of the Employer and duly authorized representatives of the Local and the United is attached hereto and marked "Exhibit C".

10. The Employer complied with the terms and provisions of Exhibit C until September 4, 1957, when it posted a notice advising its employees and members of the Local that the rates of pay in effect as of May 18, 1957 would be thereafter paid, thereby terminating further payments of wages in accordance with Exhibit C. A copy of said notice is attached hereto and marked "Exhibit D".

11. The Plaintiffs allege that the Employer will not comply with any of the terms of the collective bargaining agreement, marked Exhibit C, and that the Employer refuses to recognize the validity and effectiveness of the said agreement. The said agreement, Exhibit C, contains provisions with respect to:

a) Safety and health—Article VI, page 6.

b) Work schedule and lunch period—Article VII, page 7.

c) Wash-up time—Article VII, pages 7 and 8.

d) Pay for jury duty—Article VII, page 8.

e) Pay for day of plant injury—Article VII, page 8.

f) Access to the plant premises by representatives of the United—Article X, page 9.

g) Agreement that employees will not be summarily discharged nor discharged without just cause—Article XII, pages 9 and 10.

h) Vacations—Article XV, pages 11 and 12.

i) No strikes and lockouts—Article XVI, page 13.

j) Seniority—Article XVII, pages 13, 14, 15 and 16.

k) Wages—Article XVIII, pages 16 and 17.

l) Insurance—Article XIX, pages 17, 18 and 19.

[fol. 4] m) Union shop and checkoff—Article XX, pages 19, 20 and 21.

n) Overtime premium pay—Article XXIII, pages 22, 23 and 24.

o) Holidays—Article XXIII, Sec. 7, page 24.

12. The Plaintiffs and other members of the Local and the United, for whom they adequately and fairly represent, have no complete, plain and adequate remedy at law.

13. The Plaintiffs further allege that the acts of the Employer aforesaid may result in immediate and substantial and irreparable injury to the Plaintiffs and members of said Local and United, and further allege that time is of the essence in this matter.

14. The Plaintiffs further allege that as to each item of relief prayed for, far greater injury will be inflicted upon the Plaintiffs and those whom they represent by the denial than upon the Defendant by the granting of relief.

15. The Plaintiffs allege that there is no labor dispute in existence between the Employer and the United in that the subject matter of this Bill of Complaint does not involve or grow out of a labor dispute defined in General Laws, Chapter 149, section 20 (c); that the subject matter of this Bill of Complaint does not come within the terms of General Laws, Chapter 214, section 9(a); that the provisions of General Laws, Chapter 214, section 9, are applicable to the subject matter of this Bill of Complaint; that in accordance with General Laws, Chapter 214, Section 9, immediate and irreparable loss or damage will result to the Plaintiffs before this Bill of Complaint can be heard on notice.

16. The Plaintiffs further allege that the Employer is in violation of General Laws, Chapter 149, section 148 in that wages earned by the employees of the Employer and, in particular, the employees hereinbefore listed have not been paid in accordance with said General Laws, Chapter 149, section 148.

Wherefore, The Plaintiffs pray that:

a) a temporary restraining order and preliminary in- [fol. 5] junction issue restraining the Defendant, its agents, servants and attorneys from terminating the existing collective bargaining agreement;

b) a temporary restraining order and preliminary injunction issue restraining the Defendant, its agents, servants and attorneys from terminating the existing collective bargaining agreement until a hearing has been held on the merits of this case;

c) a temporary mandatory order and preliminary mandatory injunction issue ordering the Defendant to continue in effect the full provisions of the collective bargaining agreement;

d) the rights of the Plaintiffs and the other members of the Local and the United whom they fairly and adequately represent in this collective bargaining agreement be established and determined;

e) the Defendant be made to account to the Plaintiffs for all of the monies that may be due them;

f) the damage of the Plaintiffs as individuals arising from the acts of the Defendant terminating the existing collective bargaining agreement be established and determined;

g) a decree issue ordering specific performance of the collective bargaining agreement by the Defendant;

h) a permanent injunction issue awarding the Plaintiffs individually and in their respective capacity the same relief as above prayed for in the form of temporary restraining orders, temporary mandatory orders, preliminary mandatory injunctions and preliminary injunctions;

i) in accordance with General Laws, Chapter 149, section 149, this Honorable Court issue a summons to said Employer to appear and show cause why a warrant should not issue against him for violation of General Laws, Chapter 149, section 148.

j) such other and further orders as to this Honorable Court may seem meet and proper.

Respectfully submitted,

Roy Stevens

[fol. 6] *Duly sworn by Roy Stevens, jurat omitted in printing.*

"EXHIBIT A" TO BILL OF COMPLAINT

STIPULATION

The Charles Dowd Box Co., Inc. and the United Steelworkers of America hereby agree to extend the collective bargaining agreement dated June 25, 1955 and the stipulation dated May 19th, 1956 and all other stipulations until November 19th 1958 with the following amendments:

1) 13 cents wage increase.

2) One additional holiday.

3) Elimination of the rate range within 90 days.

4) Vacations to be computed on an anniversary basis.

The above parties hereby set their hands and seal on this 21st day of May, 1957.

United Steelworkers of America

/s/ John J. Andonian, Rep.
/s/ John F. Courtney, Pres.

Charles Dowd Box Co., Inc.

/s/ Dave C. Dowd, V. P.

[fol. 7]

"EXHIBIT B" TO BILL OF COMPLAINT

May 28, 1957

NOTICE

Due to certain bookkeeping difficulties, the newly negotiated wage increases will not be in your pay check until June 7, 1957. However, since it is retroactive, when you receive it, it will be accumulated back to May 20, 1957

ANNA DOWD

"EXHIBIT C" TO BILL OF COMPLAINT

—copy—

AGREEMENT

This AGREEMENT, made and entered into this 20th day of May, 1957 is by and between the CHARLES DOWD BOX COMPANY, INC. (hereinafter called the Company) and the UNITED STEELWORKERS OF AMERICA, AFL-CIO, (hereinafter called the Union).

The Company and the Union agree as follows:

ARTICLE I

Recognition

The term "Employee" as used in this Agreement applies only to those individuals employed on production and maintenance jobs (including "truck drivers") in the Worcester, Massachusetts, plant of the Company.

The term "Employee" does not apply to individuals employed as: Office,' clerical and professional personnel, ex-
[fol. 8] ecutives, sample maker, foreman, guards and other supervisors as defined by the Act.

The Union having been designated the exclusive collective bargaining representative of the employees, as defined above, the Company recognizes the Union as such exclusive collective bargaining representative in all matters of rates of pay, hours of work, and other conditions of employment.

ARTICLE II

Purpose and Intent of the Parties

The purpose of the Company and the Union in entering into this labor Agreement is to set forth their agreement on rates of pay, hours of work, and other conditions of employment so as to promote orderly and peaceful relations with the employees, to achieve uninterrupted operations in the plant, and to achieve the highest level of employee performance consistent with safety, good health, sustained effort.

The Company and the Union encourage the highest possible degree of friendly, cooperative relationships between their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends on more than words in a labor agreement, that it depends primarily on attitudes between people in their respective organizations and at all levels of responsibility. They believe that proper attitudes must be based on full understanding of and regard for the respective rights and responsibilities of both the Company and the Union. They believe also that proper attitudes are of major importance in the plant where day-to-day operations and administration of this Agreement demand fairness and understanding. They believe that these attitudes can be encouraged best when it is made clear that Company and Union officials, whose duties involved the negotiation of this Agreement, are not anti-union or anti-company but are sincerely concerned with the best interests and well-being of the business and all employees.

[fol. 9]

ARTICLE III

Supervisory Employees

Persons employed in any capacity not included in the bargaining unit shall not perform work customarily performed by employees of the bargaining unit. This provision shall not prohibit a supervisor from training or assisting employees, developing new methods or becoming familiar with the operation of new equipment. Supervisors may perform work in an emergency while no qualified employee is available.

No one employed in a supervisory capacity shall displace an employee in the bargaining unit unless such supervisor shall have first been transferred into the bargaining unit and his jobs rights there determined according to the Seniority provisions of this contract.

ARTICLE IV

Grievance Procedure

Any employee or group of employees who have a complaint will discuss such complaint with their immediate supervisor or foreman. The Union Steward may be present at this discussion. If the complaint is not satisfactorily settled within two working days of the date of discussion with the supervisor or foreman, it shall be reduced to writing on grievance forms provided for that purpose, and shall be handled in accordance with the following procedure:

Step 1: The written grievance shall be presented to the foreman by the appropriate steward or grievanceman, and the foreman shall give his answer in writing within two working days of the time the grievance is presented to him in writing. The aggrieved employee or employees may attend any discussions in this step of the grievance procedure if they so desire.

Step 2: If the written answer of the foreman is unsatisfactory, the grievance shall be appealed within two working days to the Assistant Superintendent of the plant. The Assistant Superintendent shall give the steward or grievanceman a written answer within three working days [fol. 10] of the time at which the written grievance is appealed to him. The aggrieved employee or employees may be present at any discussion in this step of the grievance procedure if they so desire. If the written answer of the Assistant Superintendent is not satisfactory, the grievance may be appealed in writing within three working days of the date on which the Assistant Superintendent's answer is received.

Step 3: If the grievance is so appealed, it shall be taken up at a meeting between the Grievance Committee of the Union, not to exceed three in number, and representatives

of the Company. Grievance meetings in this step of the grievance procedure shall be held weekly at a regular time and place to be established by mutual agreement of the parties. If no grievances have been appealed to the 3rd Step of the grievance procedure by forty-eight hours prior to the time established for the weekly grievance meeting, no such meeting need be held during the week.

The Company shall give a written answer on grievances appealed to the 3rd Step within five working days of the day on which the 3rd Step grievance meeting is held.

If the Company's written answer is not satisfactory, the grievance shall be appealed to a meeting between a representative of the International representative and a representative of the Company.

Representatives of the Union and of the Company in the 3rd Step of the grievance procedure may call as witnesses anyone whom they respectively believe to be essential to a discussion of the grievance.

Step 4: If the grievance is appealed to a meeting between an International representative and a representative of the Company, the Union shall request such meeting within five working days of the date on which the answer of the company in the 3rd Step of the grievance procedure was received by the Union.

Representative of the International Union and the representative of the Company may respectively have at the 4th Step grievance meeting as witnesses those persons whom they consider to be essential to a discussion of the grievance. The Company shall promptly give to the International Union a written answer to all 4th Step grievances.

[fol. 11] If the answer of the Company is unsatisfactory to the Union, the Union may within ten days after receipt of such 4th Step written answer, refer the grievance to arbitration in accordance with the rules and procedures of the American Arbitration Association. The decision of the Arbitrator in all cases shall be final and binding on both parties.

The arbitrator shall have the power to interpret and apply the provisions of this collective bargaining Agreement, but shall not have the authority to alter, amend, or otherwise change the provisions of this collective bargain-

ing Agreement. The expenses of the Arbitrator and the American Arbitration Association, in connection with any arbitration case, shall be paid equally by the Company and the Union.

Either the Company or the Union may use the foregoing procedure for the purpose of settling grievances. In appropriate cases the Company or the Union may institute grievance action in the 3rd Step of the foregoing procedure on any grievances having to do with the interpretation or application of the provisions of this collective Agreement, with respect to any group or groups of employees.

Any grievance not appealed to the next step of the above grievance and arbitration procedure within the respective time limit specified herein shall be considered settled and may not be reopened.

Union activities shall be carried on outside of working hours except for those activities necessary to administer the collective bargaining Agreement.

All grievances must be filed within thirty days of the date of occurence or the date of knowledge by the Union of the circumstances giving rise to the grievance.

ARTICLE V

Leaves of Absence

The Company shall grant leaves of absence up to one year to any employee who becomes ill or is injured. Such leave shall continue for the duration of the illness or injury or for one year, which ever is less.

Employees absent because of illness or injury for a [fol. 12] period of ten consecutive working days or more shall present a doctor's certificate on their return to work.

In the case of an illness or injury which extends for a period of more than one year, the question of whether or not (and if extended, how long) to extend the leave of absence beyond the year will be reviewed by the Company and the Union at the end of the year. An extension will not be unreasonably withheld by the Company.

Leaves of absence for a period not to exceed thirty days may be granted for urgent personal reasons. Leaves of absence granted pursuant to this provision shall be granted

uniformly unless to do so would interfere with the efficient operation of the plant.

Length of continuous service shall accumulate during all leaves of absence.

Union shall be notified in writing of all leaves granted and the reason there for.

Employees desiring a leave of absence for urgent personal reasons shall make written application for such leave to the Personnel Department.

ARTICLE VI

Safety and Health

The Company shall take all measures necessary properly to protect the health and safety of the employees, and shall provide adequate first aid facilities and supplies.

Subject to the Shop Rules, the Company shall provide the employees with all apparel and equipment necessary to protect their health and safety.

JOINT SAFETY COMMITTEE:

A Safety Committee, consisting of two employees designated by the Union and two Management members designated by the Company, shall be established. This Committee shall hold monthly meeting at times determined by [fol. 13] the Committee. The function of the Safety Committee shall be to advise with plant Management concerning safety and health matters but not to handle grievances. In the discharge of its functions, the safety committee shall: consider existing practices and rules relating to safety and health, formulate suggested changes in existing practices and rules, and recommend adoption of new practices and rules. Advices of the Safety Committee, together with supporting suggestions, recommendations, and reasons, shall be submitted to the plant General Manager for his consideration and action.

ARTICLE VII

Miscellaneous

Smoking privileges and rest periods shall be continued in accordance with the present practice.

A joint Company-Union Committee shall be established to administer the proceeds of the coke and other dispensing machines, for the benefit of all persons employed by the Company.

WORK SCHEDULE AND LUNCH PERIOD

The regular work day shall begin at 6:50 a.m. and end at 11:10 p. m. for the present two shift operation, with one-half hour lunch periods of which twenty minutes will be paid. A ten minute coffee break will be allowed between 8:50' and 9:10 a. m. on the first shift. Lunch periods shall be taken between 11:30 and 12:30.

Second shift lunch periods shall be taken between 6:30 and 7:30 p. m. A ten minute coffee break will be allowed between 5:00 p. m. and 5:10 p. m.

WASH UP TIME

Each employee shall be permitted a wash up period of the last five minutes of his work schedule, where such ar-
[fol. 14] rangement is possible without interfering with the proper operation of the job.

PAY FOR JURY DUTY

An employee who is called to serve on a jury, shall be paid (for not more than thirty days) the difference between his jury duty fee and earnings lost by him by reason of such jury duty service.

PAY FOR DAY OF PLANT INJURY

If an employee is unable to work a full work day as a result of an injury in the plant, he shall nevertheless be paid for that day at eight (8) times his regular rate.

ARTICLE VIII

Military Service

If an employee is required or voluntarily enlists in the military service of the United States, the Company agrees that such employee shall be entitled to all benefits pertain-

ing to seniority rights, re-employment, or otherwise as provided in any present or future applicable law.

MILITARY PAY DIFFERENTIAL

When an employee, with at least one year of continuous service, attends two-week training periods of the Armed Forces, the National Guard or the Reserve, such employee shall be paid the difference between his regular Company pay and his military pay for such periods.

ARTICLE IX

Bulletin Boards

The Union shall have the right to post notices on the [fol. 15] bulletin boards in the plant after such notices have been cleared with the Personnel Director or the General Superintendent. Such notices shall be confined to the following items:

1. Notices of Union meetings.

2. Notices of Union elections, appointments and election results.

3. Union recreational or social affairs.

4. Such other notices of Union activities as may be mutually agreed upon.

ARTICLE X

Union Representative

A duly accredited representative of the Union shall have access to the plant at all reasonable times for the purpose of investigating or processing grievances, or conferring with Management.

The Union representative shall be accompanied by a representative of Management when Management so desires.

ARTICLE XI

Retroactivity

Grievances involving wage rates, loss of earnings or other benefits shall be retroactive to the date when such wage rate was changed, earnings adversely affected, or benefits lost.

ARTICLE XII

Discharge Cases

The Company agrees that an employee shall not be summarily discharged, but that in all instances in which the Company may conclude that an employee's conduct may justify suspension or discharge, he shall first be suspended and the Union notified immediately in writing. Such initial suspension shall be for not more than five calendar days. During this period of initial suspension the employee or the [fol. 16] Union may, if it is believed the employee has been unjustly dealt with, request in writing a hearing and a statement of the offense before the proper representatives of the Company and the Union. At such hearing the facts concerning the case shall be made available to both parties. After such hearing the Company may conclude that the suspension shall be converted into discharge, or, depending on the facts of the case, that such suspension may be affirmed, reduced, extended or revoked.

If the suspension is revoked, the employee shall be returned to employment and shall receive full compensation at his regular rate of pay for the time lost.

In the event the disposition shall result in either the affirmation or extension of the suspension or discharge of the employee, the employee may within five days after such discharge, allege a grievance, which shall be handled in accordance with the grievance procedure.

Final decision on all suspensions or discharge cases shall be made by the Company within five working days from the date of hearing of the grievance, if any, should it be determined by the Company or by an arbitrator, that the employee has been discharged or suspended unjustly, the Company shall reinstate the employee and pay full compensation at the employee's regular rate of pay for the time un-

justly lost. No employee shall be entitled to pay for time lost as the result of a justified suspension or discharge.

ARTICLE XIII

Discharge Grievances

A grievance involving the discharge of an employee or employees may be initiated by the Union at the last step in the grievance procedure prior to arbitration.

Such a grievance shall take precedence over all other pending grievances and shall be heard within four working days of the filing of the grievance.

[fol. 17]

ARTICLE XIV

Reporting and Call-in Pay

An employee who is instructed to report for work and finds his scheduled work not available, shall be given four hours of productive work at his regular hourly rate or at the rate of the job, whichever is higher, or four hours pay in lieu of work. Pay given in lieu of work shall be at the employee's regular straight time hourly rate. In the event the employee refuses to accept work offered him in accordance with the provisions set forth herein, such employee shall not be entitled to reporting pay.

Employees actively working and employees absent from work with proper excuse, who are not notified before quitting time on any work day not to report for work the succeeding work day, are deemed to be instructed to report for work. Employees absent from work without proper excuse when such notification is given, shall be deemed to have been instructed not to report for work.

If the failure to provide work is due to an Act of God or a condition beyond the control of the Company, the Company shall not be liable for reporting pay.

If an employee has completed his work for the day and has left the plant, and is then recalled to work by the Company, he shall be guaranteed a minimum of two hours work or two hours pay in lieu of work at either straight time or the proper premium rate, whichever is applicable.

ARTICLE XV

Vacations

Each employee with nine months but less than one year of continuous service with the Company shall receive one week's vacation with pay at thirty-five times the employee's regular hourly rate; each employee with one year but less than three years of continuous service with the Company shall receive one week's vacation with one week's pay; each [fol. 18] employee with three years but less than fifteen years of continuous service with the Company shall receive two weeks vacation with two weeks pay; each employee with fifteen or more years of continuous service with the Company shall receive three weeks vacation with three weeks pay. Each week of vacation pay shall be forty times the employee's regular hourly rate.

Length of continuous service shall be determined as of the date of hire. The Company shall pay additional vacation pay, if any, on each employee's anniversary date of hire, if additional vacation pay is earned, in accordance with the schedule as set forth in the preceeding paragraph.

Where there would be a conflict, preference as to the time of vacation shall be accorded in the order of seniority.

Vacations shall be taken between June 25th and October 1st of each year. Vacation pay shall be paid on the last pay day prior to the employee's actual vacation. If a paid holiday occurs during an employee's vacation, he shall receive holiday pay in addition to vacation pay.

To qualify for vacation with pay, an employee must have received thirty (30) pay checks (including vacation pay) during the twelve months prior to the time he takes his vacation.

The Company may designate a period of shutdown between June 25th and September 1st as part or all of the vacation period.

Where two consecutive weeks of vacation for any employee would interfere with the efficient operation of the plant, such employee's second week of vacation shall be scheduled for an alternative time which would not interfere with such efficient operation. The schedule of any such alternative vacations shall be determined not later than June 1st of the vacation year.

When justified by business conditions the Company in its discretion may request shorter vacation periods than provided for above. However, employees who qualify for vacation pay must take at least seven consecutive days of vacation from work. Any employee at his option may comply with the Company's request. In such cases, vaca- [fol. 19] tion pay shall be given on the last pay day prior to the week in which he would otherwise go on vacation.

ARTICLE XVI

Strikes and Lockouts

The applicable procedures of this Agreement will be followed for the settlement of all grievances.

A. There shall be no strikes, work stoppages or interruptions or impeding of work. No officer or representative, or member of the Union shall authorize, instigate, aid or condone such activities.

No employee shall participate in any such activities.

There shall be no lockouts.

B. In the event of a strike, work stoppage, slowdown, interruption or impeding of work on the part of any or all employees during the life of this Agreement and in the further event that such action is unauthorized by the International and/or Local Union, the Company agrees that there shall be no liability on the part of the International or Local Union or any of their officers or agents, provided that the International and Local Union meet the following conditions forthwith:

(1) Declare publicly at once that such action is unauthorized and notify the Company immediately in writing that said action is unauthorized.

(2) Promptly order its members to return to work.

(3) Promptly use all reasonable means at their disposal to end such unauthorized action.

ARTICLE XVII

Seniority

Sec. 1—The term "Seniority" as used in this Agreement applies to an employee's continuous service with the Company computed from the date of his hire or if the continuity of his service has been broken, as hereinafter set forth, from the date of his latest rehiring.

Sec. 2—In all cases of lay-off, recall, transfer, demotion or [fol. 20] promotion, an employee's seniority shall be the determining factor provided the senior employee has the ability to perform the required work in a reasonably satisfactory manner after a reasonable trial period, subject only to the provisions of Section 3 of this Article.

Continuous service shall be broken by:

(a) Quits his employment. An employee who quits in anger shall have a 48-hour cooling off period during which time he may request reinstatement. Only on the first of such occasions he will be reinstated without loss of seniority.

(b) Discharged for proper cause.

(c) Working for the Company outside of the bargaining unit as defined in Article I—Recognition—for a continuous period of more than three years.

(d) Failure to return to work within ten (10) days of mailing of registered mail notification to return. Must signify his intention to return within three (3) days of receipt of notification.

(e) Continuous lay-off for a period of two (2) years.

Sec. 3—Whenever a new vacancy exists in the bargaining unit, the Company shall post a notice on the bulletin boards for two (2) working days. This notice shall include the job title, rate of pay and notice that a vacancy exists.

Any employee who desires the vacancy may submit a written bid for the job within the two (2) work day posting period.

The vacancy shall be filled from among the bidders in the following manner:

Factors "A" and "B" shall be considered and where Factor "A" is relatively equal, Factor "B" shall be the determining factor.

"A". Ability to perform the required work.

"B". Length of continuous bargaining unit service.

The successful bidder shall not be considered permanently assigned to the job until after thirty (30) days on the job.

If there are no bidders, the Company may offer the job to any employee or hire a new employee. When the vacancy is on the first shift, the seniority of the successful bidder shall be measured against the seniority of incumbents on other shifts and preference as to shift shall go to the one with the greatest seniority.

[fol. 21] *Sec.* 4—The first thirty (30) days after date of hire shall be a probationary period during which the employee shall have no seniority and may be transferred or discharged as the Company may desire, without recourse to the grievance procedure.

If the employee is retained in the employ of the Company beyond the thirty (30) day period, he shall become a regular employee with seniority commencing as of the date of hire.

Sec. 5—Employees then occupying the offices of Local Union President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, and Grievance Committeemen, (not exceeding a total of eight [8] employees) shall have preferential seniority in all cases of lay-off or recall.

Whenever the work force is to be reduced and the reduction continues to the point at which an employee with preferential seniority would otherwise be laid off, he shall be retained at work by allowing him to displace the employee next above him in seniority whose work he can perform. The intent of this provision is to retain in active employment employees with preferential seniority for the purpose of continuity in the administration of the labor contract in the interest of employees so long as a work force is at work; provided that no employee with preferential seniority is retained in employment unless work which he can perform is available to him.

Sec. 6—In the event an employee is transferred outside of the bargaining unit (as defined in the 2nd paragraph—

Recognition) for a continuous period of three years or less, and he is transferred back into the bargaining unit within the three (3) year period, such employee shall retain only his seniority he shall have accumulated as an employee of the bargaining unit.

Sec. 7—Recalls from lay-offs shall be in the reverse order of lay-offs with preference given to employees having preferential seniority.

[fol. 22] ARTICLE XVIII

Wages

Effective May 20, 1957, the minimum hiring rates shall be as follows:

	Date of Hire	*After 30 days*	*After 60 days*
Job Class 13	$1.31	$1.41	$1.51
Job Class 12	1.41	1.51	1.61

Effective May 20, 1957 the rate for each job and the rate of pay for each employee shall be increased by thirteen cents (13¢) per hour.

Effective May 20, 1957, the schedule of Job Rates shall be as follows:

Job Class	*Minimum*	*Maximum*
1	$2.21 and up	
2	1.91	2.11
3	1.86	2.06
4	1.81	2.01
5	1.76	1.96
6	1.71	1.91
7	1.66	1.86
8	1.61	1.81
9	1.56	1.76
10	1.51	1.71
11	1.46	1.66
12	1.41	1.61
13	1.31	1.51

On or before August 19, 1957, the schedule of Job Rates for each Job Classification shall be as follows:

Job Classification	*Rate of Pay*
1	$2.21 and up
2	2.11
3	2.06
4	2.01
5	1.96
6	1.91
7	1.86
8	1.81
9	1.76
10	1.71
11	1.66
12	1.61
13	1.51

[fol. 23] On or before August 19, 1957, the Company agrees to increase the rate of pay of each employee whose rate of pay in their respective Job Classification is below the above schedule of Single Rates, to conform with such schedule of Single Rates.

When an employee shall be assigned temporarily, for the convenience of the Company, to work other than his regular work, he shall be paid his regular rate or the rate of the job to which he is assigned, whichever is the higher rate.

Whenever a new job is established or a substantial change occurs in an existing job, the rate for such job shall be negotiated by the parties. If the parties fail to agree, the rate shall be initially established by the Company but the Union shall have the right to file a grievance, subject to arbitration, respecting such rate. The rate established shall bear a proper relationship to existing rates.

ARTICLE XIX

Insurance

The following program of insurance shall be provided for all employees:

Employees:

1. Life $1000

2. A D & D $1000

3. Weekly Sickness or Accident Benefits, commencing on the first day of injury and on the eighth day of illness, and continuing for a maximum of 13 weeks for any one absence, with benefits according to the following schedule:

	Basic Weekly Earnings	*Weekly Accident & Sickness Indemnity*
Up to and including	$50.00	$31.50
Between $50.01 and	55.00	34.00
" 55.01 and	60.00	37.00
" 60.01 and	65.00	40.00
" 65.01 and	70.00	43.00
" 70.01 and	75.00	46.00
" 75.01 and	over	49.00

[fol. 24] 4. Daily Hospital Benefits $13.00 for a maximum of 70 days for any one hospitalization.

5. Hospital Extras $260.00 plus 75% of next $1,000.00.

6. Surgical Benefits at $300.00 schedule.

7. In Hospital Medical Benefits $5 per day for a maximum of 70 days.

8. Maternity Benefits, explain.

Dependents:

1. Daily Hospital Benefits as above.

2. Hospital Extras as above.

3. Surgical Benefits as above.

4. In-Hospital Medical Benefits as above.

5. Explain Maternity Benefits.

PAYMENT:

For the above benefits each employee who elects to participate will pay monthly one-half the cost of the coverage for the employee and one-half the cost of the coverage for his dependents, if any.

The Company will pay an equal amount for each employee.

Payments will be made once each month by payroll deduction.

INDIVIDUAL TERMINATION:

The obligation of the Company to provide insurance coverage for any employee and to contribute to the cost of such coverage shall terminate upon his indefinite layoff, discharge, quit or strike, provided that the Company matches the last payroll deduction for insurance made with respect to such employee. Coverage will be extended for sixty (60) days beyond his cessation from active work in the case of an employee out because of sickness or injury. If such absence extends beyond sixty (60) days, the employee must either pay his share of the insurance costs or make some other arrangement satisfactory to the Company if coverage is to be continued.

[fol. 25] DIVIDENDS:

Any dividends at the end of any year shall be applied so as to reduce the cost of insurance coverage in the ensuing year. The Union will be furnished with a copy of the annual statement of experience and dividends.

ARTICLE XX

Union Membership and Check-Off

A. UNION MEMBERSHIP:

1. All present employees of the Company shall thirty (30) days after the date of this Agreement become and remain members of the Union in good standing to the extent of paying the dues, initiation fees, and assessments uniformly charged all members.

2. Each employee hired on or after May 20, 1957 shall, as a condition of employment, beginning on the 30th day following the beginning of such employment or the effective date of this Agreement, whichever is the later, acquire and maintain membership in the Union.

3. On or before the last day of each month the Union shall submit to the Company a certified list showing the name, department number and clock number of each employee who shall have become a member of the Union in good standing other than pursuant to Section A-2 above since the last previous list of such members was furnished to the Company. The Union shall furnish the Company not later than May 29, 1957, with a certified list of all employees who are then members in good standing of the Union.

For the purpose of this Section, an employee shall not be deemed to have lost his membership in the Union in good standing until the Financial Secretary of the Local Union shall have determined that the membership of such employee in the Union is not in good standing and shall have given the Company a notice in writing of that fact.

[fol. 26] B. CHECK-OFF

1. The Company will check off monthly dues, assessments and initiation fees each as designated by the International Secretary-Treasurer of the Union, as membership dues in the Union, on the basis of individually signed voluntary check-off authorization cards, the form of which hereto is annexed.

2. At the time of his employment the Company will suggest that each new employee voluntarily execute an authorization for the check-off of Union dues. A copy of such authorization card for the check-off of Union dues shall be forwarded to the Financial Secretary of the Local Union along with the membership application of such employee.

3. New check-off authorization cards other than those provided for by Section B-2 above will be submitted to the Company through the Financial Secretary of the local Union on or before the last day of each month.

4. Deductions on the basis of authorization cards submitted to the Company shall commence with respect to dues for the month in which the Company receives such authorization cards or in which such cards become effective, whichever is later. Dues for a given month shall be deducted from the first pay closed and calculated in the succeeding month.

5. In cases of earnings insufficient to cover deduction of dues, the dues shall be deducted from the next pay in which there are sufficient earnings.

6. The Financial Secretary of the Local Union will be notified of the reason for non-transmission of dues in cases of lay-off, discharge, resignation, leave of absence, sick leave, retirement, death or insufficient earnings.

7. The Company will deduct initiation fees when notified by notation on the lists referred to in paragraph 3 of this Section and assessments as designated by the International Secretary-treasurer. With respect to check-off authorization cards submitted directly to the Company, the Company will deduct initiation fees unless specifically requested not [fol. 27] to do so by the Financial Secretary of the Local Union. The Local Union shall be provided with a list of those employees for whom initiation fees have been deducted.

ARTICLE XXI

Management Prerogatives

The Union hereby recognizes that the Company has the sole jurisdiction over all matters concerning the management of the plant, including but not limited to: location of plants, products and quantities thereof to be manufactured, processes and methods of manufacturing, sources of materials and supplies, disposition of products, standards of inspection, hiring and supervision of the working force.

The Company shall also, subject to the provisions of this Agreement, have sole jurisdiction concerning: rehiring, transfer promotion and demotion, discipline, suspension or

discharge for proper cause, relieving employees from duty because of lack of work or for other legitimate reasons, scheduling of work and rules for the conduct of employees and operation of the plant.

ARTICLE XXII

Shop Rules

It is understood and agreed that employees shall comply with the Company's existing rules and regulations and with such new rules and regulations as the Company may establish from time to time.

If a rule or regulation should be adopted by the Company it shall be consistent with this Agreement and notice thereof shall be given to the Union at least four work days prior to the effective date of such new rule or regulation. The posting of any new rule or regulation on the Company's Bulletin Boards for two (2) work days shall constitute sufficient notice to employees of such new rule or regulation.

All employees shall promptly and efficiently execute the reasonable instructions and orders of foremen and of other [fol. 28] supervisors, and comply with all Company rules and regulations. If the employee believes that any reasonable instruction, order, rule or regulation conflicts with the provisions of this Agreement, he shall nevertheless comply with the same to the best of his ability, pending disposition of his case through the grievance and arbitration procedure of this agreement.

The Company will promptly furnish to the Union a copy of each formal disciplinary notice issued to an employee.

ARTICLE XXIII

Hours, Overtime and Premium Pay

Sec. 1. The provisions of this section are intended only as a means of determining the payment of overtime and shall not be construed as a guarantee of hours of work per day or per week or of days of work per week.

The regular work day shall consist of eight (8) consecutive hours except for unpaid lunch periods in accordance with prevailing practice or changes by mutual agreement of the parties.

The regular work week shall consist of five (5) consecutive days, commencing on Monday and ending on Friday.

The calendar day worked for the respective shifts shall be determined as of the time the first shift starts to work.

Sec. 2. One-and-one half times the regular rate shall be paid for all time in excess of eight hours worked in any one day.

One-and-one-half times the regular rate shall be paid for all time worked on Saturday, unless the employee has been absent during the week of his own volition without proper cause.

Two times the regular rate shall be paid for all work performed on Sunday.

Where hours worked fall into more than one premium pay category, only the highest premium shall be paid.

Sec. 3. Overtime work shall be distributed as evenly as possible among the qualified employees over a reasonable period of time.

The Company shall have the right to require a reasonable amount of overtime.

[fol. 29] No employee shall work more than eight (8) hours in any one day unless authorized by the Company.

Sec. 4. For the purpose of determining shift differentials, shift hours shall be as follows:

First Shift	—7 a.m. to 3 p.m.
Second Shift	—3 p.m. to 11 p.m.
Third Shift	—11 p.m. to 7 a.m.

Shift differential shall be 5¢ per hour for the second shift and 10¢ per hour for the third shift.

When an employee's hours of work fall into more than one shift, the shift differential applicable to the shift on which the majority of hours are worked shall be paid for all hours worked.

When the hours are evenly divided between shifts, the differential shall be divided evenly.

Sec. 5. All employees working a straight eight hour shift shall be entitled to a 20 minute paid lunch period.

Sec. 6. Powerhouse employees shall receive one-and-one half times their regular rate of pay for all hours worked in any one day outside the schedule as hereto attached.

Each powerhouse employee shall receive one-and-one half times his regular rate of pay for all hours worked on the sixth day of his scheduled week unless the employee has been absent during the week of his own volition without proper cause.

Powerhouse employees shall receive two times their regular rate for all work performed on the seventh day of their scheduled week.

For powerhouse employees, the provisions of this Section shall take precedence over the provisions of Section 2 of this Article.

Sec. 7. The following days shall be considered Holidays:

New Year's Day	Veterans' Day
Memorial Day	Thanksgiving Day
Fourth of July	Christmas Day
Labor Day	

Each employee, who has completed his thirty (30) day probationary period, shall receive for each such Holiday [fol. 30] a day's pay, provided he has performed work for the Company during the week in which the Holiday falls or during the week next prior thereto.

For each hour worked on the above holidays he shall be paid at one-and-one half times his regular rate of pay, in addition to the pay for said holidays set forth above.

A day's pay shall be (1) for a full-time employee, eight times his regular straight time hourly rate, and (2) for a part-time employee, the number of hours per day scheduled for him in the holiday week times his regular straight time hourly rate.

All employees are expected to work their regular schedule on the working days before and after each holiday.

ARTICLE XXIV

Duration of Agreement

This Agreement shall be effective for the period from May 20, 1957 to and including November 21, 1958.

Anything to the contrary herein notwithstanding, it is agreed that either party may give to the other party a written notice by registered mail sixty (60) days prior to November 21, 1958 of its intention to terminate or modify this agreement.

ARTICLE XXV

This Agreement represents the complete and sole agreement of the parties. To be effective, any additions, modifications or amendments hereto shall be in writing, dated, and signed by the parties to this original Agreement.

IN WITNESS WHEREOF the parties, by their respec-
[fol. 31] tive representatives thereunto duly authorized have caused these presents to be executed as of May 20, 1957.

CHARLES DOWD BOX COMPANY, INC.

By: /s/ Dave C. Dowd, V. P.

UNITED STEELWORKERS OF AMERICA, AFL-CIO

By:

/s/ John J. Andonian, Rep.
/s/ John F. Courtney, Pres.
/s/ Clifford G. Allard
/s/ Robert C. Spring

APPENDIX A TO EXHIBIT "C"

CHECK-OFF AUTHORIZATION
For UNITED STEELWORKERS OF AMERICA

_____

Company

_____

Plant

_____ 19_____

Date

Pursuant to this authorization and assignment, please deduct from my pay each month, while I am in employment within the collective bargaining unit in the company, monthly dues, assessments and (if owing by me) an initiation fee each as designated by the International Secretary-Treasurer of the Union, as my membership dues in said Union.

The aforesaid membership dues shall be remitted promptly by you to I. W. Abel, or his successor, International Sec- [fol. 32] retary-Treasurer of the United Steelworkers of America, or its successor, 1500 Commonwealth Building, Pittsburgh 22, Pennsylvania.

This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.

I hereby voluntarily authorize you to continue the above authorization and assignment, in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1) year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, an individual written notice signed

by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within the fifteen days' following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month in which such written notice is given; a copy of any such notice will be given by me to the Financial Secretary of the Local Union.

Local Union No.———
United Steelworkers of America

_____
Witness

_____
SIGNATURE

_____
Check No.

_____
Ledger No.

[fol. 33]

Appendix B to Exhibit "C"

Schedule of Job Classifications and Rates of Pay for Each Job Classification

Job Class		*May 20* 1957	*On Or Before* 8-19-1957
1.			
	Electrician, Master	$2.21 & Up	$2.21 & Up
	Engineer—		
	Class 1 in charge of Power House and Starch Division		
	Mechanic, Working Foreman		
	Mechanic, Master		
2.			
	Corrugator, Operator	1.91 to 2.11	2.11
	Mechanic,—		
	Class 1—Maintenance		
3.			
	Working Foreman, Warehouse	1.86 to 2.06	2.06
	Leadman & Loader— Shipping		
	Triplex Slitter Operator—Corr.		
4.			
	Truck Driver	1.81 to 2.01	2.01
	Fork Truck Operator—Class 1 Warehouse		
5.			
	Fireman—Class 1	1.76 to 1.96	1.96

6.		
Carpenter	1.71 to 1.91	1.91
Double Backer — Corrugator		
Printing Press Operator		
Chain Feed Operator		
Die Mounter—Store Man		
7.		
Off-Bearer	1.66 to 1.86	1.86
Spare Off-Bearer		
Corrugator Charger		
8.		
Printing Press—First Helper	1.61 to 1.81	1.81
Folder Stitcher Operator		
Fork Truck Operator—Class 2—Warehouse		
[fol. 34]		
Mechanic—Class 2		
Partition Slotter Operator		
Four Bar Rapid Slitter Operator		
Pull Pak Operator & Loader		
Thompson National Operator		
Z.B. Folder Taper Operator		
Baler		
Chain Feed First Helper		
Trucker and Loader		
Machine Operator—Specialty Department		
Transfer Car Operator—Loader		
9.		
Fireman—Class 2	1.56 to 1.76	1.76
Progressive Slat Taper Operator		
Chain Feed Second Helper		

10.			
	Chain Feed Third Helper	1.51 to 1.71	1.71
	Printing Press Second Helper		
	Stitcher Operator—Feeder No. 585		
	Thmpson National Helper		
	Bundler-Set Up Man		
11.			
	Bundlers	1.46 to 1.66	1.66
	Four Bar Slitter—First Helper		
	Stitcher Feeder—Hand		
12.			
	Partition Slotter Helper	1.41 to 1.61	1.61
	Utility—Male		
	Stitcher Feeder—No 585		
	Feeder—Semi Automatic Stitcher		
	Four Bar Slitter—Second Helper		
13.			
	Bundlers Inspector—Female	1.31 to 1.51	1.51
	Taper Feeder		
	Utility—Female		
	Janitor		
	Janitress		

Appendix C to Exhibit "C"

Plant Rules

The Company urges each employee to study these rules and at all times to comply with them. It is the employee's [fol. 35] responsibility to keep these rules for future reference. Failure to comply with them will not be excused because an employee is not familiar with the rules indicated below:

1. REPORTING FOR DUTY:

   (a) Each employee must be at his station ready for work at the scheduled time for his shift until the scheduled quitting time.

   (2) Each employee must remain at his station during his shift and must not visit other parts of the Plant except in the line of duty or by permission of his Supervisor.

2. ABSENCE:

   (a) An employee must not be absent without securing permission from his Supervisor not later than a day before absence.

   (b) In emergencies that arise after the employee has left the Plant, he must telephone the Personnel Office promptly, if possible, before his shift and give the cause and probable length of absence. Telephone PL 4-7241. After office hours the same number should be called and the person calling should ask for the shift Superintendent.

3. TIME CARDS:

   (a) Each employee must clock his card at the beginning and ending of his shift.

   (b) No employee shall clock the card of another employee under any circumstances.

(3) An employee must not clock his card (in) more than 15 minutes before his shift, and (out) not more than 15 minutes after shift.

(d) Should an employee not find his card in the rack, he should see his Supervisor.

(e) Employees must clock their cards "in" and "out" when leaving the premises for any reason, temporary or otherwise.

[fol. 36] 4. PAY CHECKS:

Requests to secure pay checks at other than the regularly sheduled time shojuld be made in advance through the employee's Supervisor.

5. CHANGING SHIFTS:

Employees may not change shifts except with the prior approval of their Supervisors.

6. ADDRESS—FAMILY STATUS:

(a) If an employee changes his address or telephone number, he should report the change immediately to the Personnel Office or Supervisor.

(b) If an employee's marital status or number of dependents changes, he should report the change immediately to the Personnel Office.

7. No employee is allowed to enter the Plant except during working hours unless he has special permission from the Personnel Office. Employees will not be allowed to bring visitors into the Plant except by permission from the Superintendent's Office.

8. No employee is allowed to leave the Plant during his shift without permission, and then he is required to clock out on his time card.

9. Smoking is permitted only in designated areas, and in the Men's and Ladies' Rooms.

10. Passes must be obtained from a Foreman when an employee takes any article or equipment out of the building. Watchmen are authorized to examine all bundles.

11. No employee shall be called to the office or to any out- [fol. 37] side telephone, or use any outside telephone while he is on duty, except in cases of emergency.

12. When an employee has been absent from work for more than one week, he should contact the Personnel Department and make necessary arrangements at least 24 hours before actually returning to work.

13. Dowd Box prides itself on a clean, orderly plant. Each employee should be clean and orderly in everything he does. This is the first rule for quality production and Dowd Box insists upon quality.

14. All employees will be expected to take good care of equipment, tools and materials entrusted to their care. Proper equipment, properly used and cared for, means a good return to the employee and the Company.

15. No employee is allowed to enter the Plant except through the main factory entrance. This is important!

16. Dowd Box will furnish the bundlers with their 1st ring knife and bundling glove. Replacement of worn ring knives or bundling gloves will be made free of charge, providing worn equipment is returned. Normal charge to be made for lost equipment.

17. CAUSES FOR DISCIPLINE

Each employee is required to work efficiently and conduct himself properly. Causes for discipline include, but are not limited, to the following:

(a) Bringing or consuming intoxicants on the plant premises.

(b) Reaorting for duty under the influence of intoxicants.

18. Employees are expected to comply with all proper orders of their supervisors.

[fol. 38] 19. Employees shall not damage or remove the Compay's or another employee's property.

20. Employees shall not fight or engage in disorderly conduct on company premises.

21. Employees shall not sleep on duty.

22. Employees shall not participate in practical jokes or pranks which may have serious results.

23. Employees shall not read on duty, except when required by work.

24. Employees shall not falsify any time card or other records.

25. Employees shall observe all plant safety rules and practices.

26. No employee shall engage in bookmaking or lottery activities on Company premises.

27. No employee shall be absent for 3 consecutive regular scheduled working days, without reporting to the Personnel Office.

EXHIBIT D TO BILL OF COMPLAINT

September 4, 1957

NOTICE

On June 5th, Management notified the plant Employees that, although a contract had not yet been consumated, the Company showed GOOD-FAITH by voluntarily making a .13 cent wage adjustment on a temporary basis, subject to the conditions of the final agreement.

[fol. 39] On August 30th the Company notified the Employees that no further wage adjustments would be made since further negotiations on the proposed contract had not yet taken place. The Management has previously requested further negotiations so that a contract may finally be reached satisfactory to all parties concerned.

To date, these requested negotiations have not yet been held. Therefore, please be advised that due to economic

conditions and in order to secure your jobs in this plant, we are compelled to return to the rates in effect as of May 18, 1957.

CHARLES DOWD BOX CO., INC.
Anna Dowd, Asst. Treas.

Suffolk, ss. Sept. 6 1957

Notice to show cause to issue in re injunctions returnable in the first session without jury at 10 o'clock a.m. at Worcester on Thursday the 12 day of Sep 1957.
Prayer I denied

By the Court (Brogna J)

Francis O. Murphy
Asst. Clerk

Sept. 9, 1957

Notice issued as ordered. Sub. issued ret. Oct. ret. day 1957

IN THE SUPREME COURT OF WORCESTER COUNTY

DEFENDANT'S DEMURRER AND ANSWER TO PLAINTIFFS' BILL OF COMPLAINT—Filed September 17, 1957

Now comes the defendant in the above entitled action and demurs to the plaintiffs' bill of complaint on the following grounds:—

1. The bill of complaint does not state facts entitling the plaintiffs to relief in equity against this defendant.

[fol. 40] 2. The bill does not contain any matter of equity where the Court can ground any decree or give to the plaintiffs any relief against this defendant.

3. The bill of complaint does not state facts entitling the plaintiffs to the relief prayed for.

4. It does not appear that the Court has taken or will take jurisdiction of the plaintiffs' bill.

5. It does not appear that the Court has taken or will take jurisdiction of the plaintiffs' bill in that it appears from the allegations therein that the bill seeks in effect specific performance of an alleged collective agreement between the Company and the Union purporting to be the bargaining agent of the employees of the defendant, and is in effect a suit for violation of an alleged contract between an employer and a labor organization; that such actions come within the purview of Section 301 of the Labor Management Relations Act of 1947, vesting exclusive jurisdiction for such actions over such suits in the District Courts of the United States and there is now no jurisdiction in the State Courts over this type of action.

6. It does not appear that the Court has taken or will take jurisdiction in equity for specific performance of a collective agreement between an employer and a Union acting as bargaining agent for employees of the employer.

7. That the bill does not set forth concisely and with substantial certainty the facts necessary to constitute a cause of action.

8. There is no valid ground for granting the relief prayed for in the plaintiffs' bill since the plaintiffs have an adequate remedy at law.

9. The plaintiffs' bill does not appear to have been duly executed by or on behalf of the plaintiffs.

[fol. 41] The said defendant, without waiving its demurrer filed herewith, but relying and insisting thereon, for answer to the plaintiffs' bill of complaint says:—

1. It has no knowledge as to the truth of the allegations contained in paragraph 1 of the plaintiffs' bill and therefore neither admits nor denies said allegations but shall call upon the plaintiffs to prove the same.

2. It has no knowledge as to the truth of the allegations contained in paragraph 2 of the plaintiffs' bill and therefore neither admits nor denies said allegations but shall call upon the plaintiffs to prove the same.

3. It admits the allegations contained in paragraph 3 of the plaintiffs' bill.

4. It has no knowledge as to the truth of the allegations contained in paragraph 4 of the plaintiffs' bill and therefore neither admits nor denies said allegations but shall call upon the plaintiffs to prove the same.

5. It admits that it employs approximately 123 employees in a collective bargaining unit consisting of production and maintenance employees, but has no knowledge as to the truth of all other allegations contained in said paragraph 5 and neither admits nor denies said allegations but shall call upon the plaintiffs to prove the same.

6. It admits that a collective agreement had been entered into between it and United under date of June 25, 1955, with regard to wages, hours and conditions of employment of its production and maintenance employees, and says that said agreement expired on May 18, 1957, and that since the latter date no valid collective agreement is or has been [fol. 42] in effect between said parties. It denies all other allegations contained in said paragraph 6.

7. It admits that collective bargaining negotiations were conducted between alleged representatives of the Local and United with certain persons purporting to negotiate on behalf of the defendant. The defendant denies that any alleged stipulation, referred to in said paragraph 7, was ever authorized to be entered into by any representatives of the defendant. The defendant denies all other allegations contained in said paragraph 7.

8. It admits that Exhibit B attached to the plaintiffs' bill is an accurate copy of a notice posted by the defendant; that the defendant acted in accordance with said notice until September 4, 1957. It denies all other allegations contained in said paragraph 8.

9. It denies the allegations contained in paragraph 9 of the plaintiffs' bill and further answering the allegations

contained in paragraph 9 of the plaintiffs' bill the defendant says that if the plaintiffs shall offer evidence tending to prove that a purported collective bargaining agreement was executed by one David C. Dowd, Vice President of the Company, it says that said David C. Dowd had no authority to act on behalf of the defendant in the execution of any such agreement, to the knowledge of the plaintiffs and their representatives.

10. The defendant admits that Exhibit D, attached to the plaintiffs' bill, is an accurate copy of a notice posted by the defendant. It denies all other allegations contained in said paragraph 10.

11. The defendant admits that it refuses to recognize the validity and effectiveness of the alleged agreement, marked Exhibit C. It denies all other allegations contained in said paragraph 11.

12. It denies all allegations contained in paragraph 12 of the plaintiffs' bill.

[fol. 43] 13. It denies all allegations contained in paragraph 13 of the plaintiffs' bill.

14. It denies all allegations contained in paragraph 14 of the plaintiffs' bill.

15. It denies all allegations contained in paragraph 15 of the plaintiffs' bill.

16. It denies all allegations contained in paragraph 16 of the plaintiffs' bill.

Charles Dowd Box Co., Inc., By Vaughan, Esty, Crotty & Mason, Its Attorneys.

Sept. 27, 1957

Demurrer overruled (Warner, J.)

[fol. 44]

IN THE SUPERIOR COURT OF WORCESTER COUNTY

INTERLOCUTORY DECREE ON DEMURRER—
Entered September 27, 1957

This cause came on to be heard at this sitting upon the demurrer of the defendant and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that said demurrer be and hereby is overruled.

By the Court (Warner, J.), Wilfred B. Feiga, Assistant Clerk.

IN THE SUPERIOR COURT OF WORCESTER COUNTY

APPEAL—Filed October 2, 1957

Now comes the defendant, Charles Dowd Box Co. Inc., in the above entitled action and appeals to the Supreme Judicial Court from the decree of the Superior Court overruling the defendant's Demurrer in said action.

Charles Dowd Box Co. Inc., By Vaughan, Esty, Crotty & Mason, Its Attorneys.

IN THE SUPERIOR COURT OF WORCESTER COUNTY

INTERLOCUTORY DECREE FOR REFERENCE TO A MASTER—
Entered October 3, 1957

This cause came on to be further heard, and was argued by counsel; and thereupon, upon consideration thereof, it is Ordered, Adjudged and Decreed that it be referred to Alfred N. Whiting, Esq., as Master, to hear the parties, find the facts and report his findings to the Court, together with such questions of law, arising in the course of his duty, as any party may request.

[fol. 45] Hearings are to begin on or before October 10, 1957 and to proceed from day to day during the usual hours for court until concluded.

By the Court (Warner, J.), Wilfred B. Feiga, Assistant Clerk.

IN THE SUPERIOR COURT OF WORCESTER COUNTY

MASTER'S REPORT*

This is a bill in equity for the specific performance of an alleged collective bargaining agreement. The statute of frauds was not pleaded.

The petitioners, other than Roy Stevens, are officers of Local 5158 of the United Steelworkers of America, AFL-CIO, hereinafter called Local. Roy Stevens is an international representative of United Steelworkers of America, AFL-CIO, hereinafter called United.

Respondent Charles Dowd Box Co., Inc., hereinafter called the Company, manufactures corrugated containers in the City of Worcester. These containers are sold in interstate commerce, and the Company purchases substantial quantities of supplies in interstate commerce.

Sometime during the latter part of 1954, Local was certified as the bargaining agent of the employees of the Company, and, after negotiations, the first collective bargaining agreement was executed in June 1955 to run through May 18, 1957. During the period of the first agreement many supplementary agreements were executed on behalf of the Company and the Local.

During the early months of 1957, Local, through its negotiating committee, presented to the Company's negotiating committee proposals for a new agreeement. The Company's negotiating committee consisted of Earl Hinchliffe, Personnel Director of Company, David Dowd, its vice president, director and head of production, and Bernard Ezhaya and J. J. Ellis, Labor Relations Consultants for the Company. Thereafter many negotiation meetings took [fol. 46] place and on May 21 agreement was reached between the negotiating committees of the Local and the Company on all items. A stipulation was signed by John Andonian, representative of United, John F. Courtney, President of Local and David Dowd covering the economic issues: 13¢ wage increase, one additional holiday, elimination of the rate ranges and anniversary vacations. Other issues had

* Exhibits 2, 3, 7 & 8 referred to in "Master's Report" are identical to Exhibits A, B, C & D attached to Bill of Complaint.

previously been resolved by the committees. That evening Local ratified the agreements reached by the negotiators. On May 28 Hinchliffe and Ellis met in Boston with Courtney and Andonian. At that meeting the final language of the alleged new agreement was agreed upon by those present. This language is contained in Exhibit 8, before me (attached hereto and made a part hereof.) On August 2, 1957 David Dowd signed Exhibit 8 and delivered it to Andonian. On August 12 Courtney was told by Hinchliffe that David Dowd no longer had anything to do with labor relations. Thereafter, on the same day, Andonian and the officers of Local also signed Exhibit 8. Exhibit 8 was thereafter sent to Boston and Pittsburgh for the signatures of the officers of United.

Soon after May 21 the Company put into effect the changes then contemplated by Exhibit 8 and these changes remained in effect until the latter part of August, 1957. It paid the 13¢ general wage increase retroactively from May 20, 1957, it honored the union shop clause and it paid vacations on an anniversary basis. Mary Dowd, its President, and Hinchliffe met with representatives of Local on August 19 and came to agreement on the names of employees whose rate ranges would be eliminated under Exhibit 8 and the new rate that each would receive.

On September 4, 1957, the Company notified its employees, members of Local, that it would return to the terms of the first agreement in effect prior to May 21 and it acted in accordance with that notice. This suit was commenced within a few days hereafter.

The Company's contentions are as follows:

1. That its negotiating committee acted beyond its authority in agreeing to the changes from the first agreement contained in Exhibit 8.

2. That David Dowd had no authority to execute and deliver Exhibit 8.

[fol. 47] 3. That as Andonian and Courtney were notified on or before August 19 that David Dowd had no authority to execute and deliver Exhibit 8, and as United's constitution states that United "shall be the contracting party in all

collective bargaining agreements and all such agreements shall be signed by" United's officers, (ARTICLE XVII, Section 1), and as Exhibit 8 was not so signed until after August 19, any Company offer to enter into the terms of Exhibit 8 was revoked before acceptance by United.

1. There was much testimony on behalf of the Company that the Company had a labor policy committee, hereinafter called LPC, and that all final decisions involving labor relations had to be approved by it. The Local had knowledge that there was such a committee, as during negotiations for supplemental agreements to the first agreement and at grievance meetings statements were made that the LPC had final authority to decide labor policy. However, there was no testimony that during the 1957 negotiation sessions the Company's negotiating committee indicated any limitation on its authority and in fact Ellis stated on several occasions that the negotiating committee did have authority. There was testimony that such statements were made during negotiations for supplemental agreements to the first contract and at grievance meetings, but there was no direct testimony that would indicate to Local any such limitation on the negotiating committee during the 1957 negotiations.

The Company's stockholders are Mary Dowd, Anna Dowd, David Dowd, and Leo Dowd, all children of the founder, Charles Dowd. In addition, the Comptroller Jacob J. Jaffee and Attorney Abee Talamo hold qualifying shares. The board of directors consists of the four Dowds, Jaffee and Talamo. The LPC consisted of Mary Dowd, Anna Dowd, David Dowd, Jaffee and Ezhaya or Ellis. Formal meetings of the directors were very infrequent, and most decisions were made at informal gatherings and no minutes were kept. Mary Dowd is the active head of the Company.

There was also much testimony on behalf of the Company that Mary Dowd didn't know of the terms of Exhibit 8 [fol. 48] until many weeks after May 21 for the reason that David Dowd, Ezhaya and Ellis kept this information from her. However, David Dowd and either Ezhaya or Ellis conferred with the LPC after each negotiating meeting. On May 21 a strike was imminent. Courtney testified

that he telephoned Mary Dowd on May 21 after the Local had ratified the terms and that he then told her the economic changes agreed upon by the negotiating committees. That evening Mary Dowd had dinner at her home with Anna Dowd, David Dowd, Hinchliffe, Ellis and Exhaya. Within a few days thereafter the Company began paying the general wage increase. Witnesses for the Company intimated that there had been collusion between David Dowd, Ellis, Exhaya and the Local in arriving at the terms embodied in Exhibit 8 but there was no evidence of facts which would warrant a conclusion of such collusion. It is inconceivable to me that Mary Dowd, as the chief executive officer of the Company and being the experienced business woman that she is, did not know the principal terms of the settlement at least by the evening of May 21.

2. After the meeting in Boston at which the language of Exhibit 8 was agreed upon, Andonian had 12 sets typed and sent 11 to Ellis for delivery to the Company. These 11 sets came into Mary Dowd's possession and remained in her possession. Exhibit 8 is not one of these 12 copies and there was no testimony as to its origin; the language, however, is identical. Twelve copies of Exhibit 8 were signed by David Dowd on August 2 and delivered at his request by Hinchliffe to Andonian at his home. There was testimony that at some time during the end of July or the first part of August David Dowd was removed from his labor relations duties, but I am not convinced that this took place prior to the delivery of Exhibit 8 to Andonian.

On May 21 all of the terms (but not the language) of a new agreement had been agreed upon between the negotiating committees. On May 28 in Boston the language was agreed upon as set forth above. On those two occasions the Company's negotiating committee had apparent authority to bind the Company. There were no formal minutes of the board of directors authorizing David Dowd to sign labor contracts. Anna Dowd was authorized by a formal vote to [fol. 49] sign the first agreement and Mary Dowd was so authorized to sign an agreement reached in 1956 on the wage reopener clause of the first agreement. But there were no formal minutes authorizing any officer to sign an agree-

ment reached as the result of the 1957 negotiations and many of the supplementary agreements to the first agreement were signed by David Dowd without formal board authority. At least two of these supplementary agreements concerned policy matters (truck drivers and employees of the Specialty Department to be members of the bargaining unit). David Dowd did not testify; he is still vice president and a director of the Company. David Dowd had at least apparent authority to sign the stipulation on May 21 on behalf of the Company.

3. Exhibit 8 was signed on August 12 by Andonian, representative of United. Part of Andonian's authority was to negotiate and make agreements on United's behalf. Exhibit 8 is not an unusual collective bargaining agreement. Its language was agreed upon on May 28 by representatives of the Company with apparent authority and by a representative of United with actual authority. Thereafter the Company, the Local and United acted under its terms for about three months. There was no understanding between said representatives that any agreement would not be effective until formally signed. The collective bargaining agreement, Exhibit 8, subsequently typed, came into being on May 28 effective from May 20, 1957.

Exhibits 3, 4, 6 and 7 before me which are notices posted by the Company on its bulletin board on the dates set forth therein are, at the request of the Defendant, attached hereto and made a part hereof.

Respondent's Exceptions to Admission or Exclusion of Evidence

The following are all the respondent's exceptions to admission or exclusion of evidence, the Master's rulings thereon and other matter pertaining thereto:

1. The petitioner asked Hinchliffe if he recognized the signature on the instrument that subsequently was intro-
[fol. 50] duced as Exhibit 8. The respondent objected. The Master ruled that the witness might answer. The respondent duly excepted. The witness testified that the signature appeared to be that of David Dowd, vice president of the

Company. (Subsequently Anna Dowd, clerk of the Company, testified that David Dowd had been removed from labor relations duties for a number of reasons, one of which was that he had signed Exhibit 8.)

2. The petitioner offered in evidence the instrument which subsequently became Exhibit 8 after the above testimony by Hinchliffe as to the signature thereon and after his testimony that it contained the exact language agreed upon at the Boston meeting. The respondent objected. The Master ruled that it was admissible. The respondent duly excepted. The instrument was admitted as Exhibit 8.

3. The petitioner asked Andonian what members of the Company's negotiating committee said during the negotiations as to their authority. The respondent objected. The Master ruled that the witness might answer. The respondent duly excepted. The witness testified that on several occasions during the negotiations Ellis said that the committee had authority.

4. The petitioner asked Andonian the extent of his authority as a representative of United to negotiate and sign collective bargaining agreements on behalf of United. The respondent objected. The Master ruled that the witness might answer. The respondent duly excepted. The witness testified that he had authority to negotiate and make agreements on behalf of United.

5. The petitioner offered in evidence the instrument which subsequently became Exhibit 13 before me, attached hereto, after Andonian had testified that his identification card for the period January 1957 to May 31, 1957 was similar. The respondent objected. The Master ruled that it was admissible. The respondent duly excepted. The instrument was admitted as Exhibit 13.

Specific Findings

1. I find that the Company's negotiating committee dur-
[fol. 51] ing the 1957 negotiations had actual authority to negotiate with Local the terms of a new contract. I am unable to find that that authority was conditional upon subsequent approval of the terms by the LPC.

2. Based upon the following subsidiary findings, I find that the Company's negotiating committee had apparent authority through May 28, 1957, to enter into a contract with Local and that David Dowd to August 12, 1957 had apparent authority to execute a contract on behalf of the Company.

a. That David Dowd was the vice president, director and a member of the LPC.

b. That Hinchliffe was the personnel director of the Company.

c. That Ellis and Ezhaya were the labor relations consultants for Company.

d. That David Dowd had previously signed many of the supplemental agreements on behalf of Company, some of which were of a policy nature although there were no formal minutes of the directors authorizing this action. These supplemental agreements were honored by the Company.

e. That David Dowd and Ellis or Ezhaya reported to the LPC after the negotiating meetings and came back with new proposals.

f. That the negotiating committee of Local had knowledge of the above.

g. That Ellis stated on several occasions during the negotiation meetings that the Company negotiating committee had authority.

h. That there was no testimony to the contrary, and, coupled with the last finding, I find that during the negotiation meetings no one of the Company's negotiating committee stated that the labor policy committee and not the negotiating committee had final authority to decide labor policies in connection with the negotiations.

i. That Mary Dowd, as President, Treasurer and a Director of the Company had knowledge of the principal terms of the settlement on the evening of May 21.

j. That on May 28, the same day the language for the [fol. 52] new contract was agreed upon at the meeting in Boston, a notice (Exhibit 3) was posted by the Company referring to "the newly negotiated wage increases."

k. That until sometime during the latter part of August the Company acted in accordance with the terms of Exhibit 8.

l. That Local was not notified until August 12th that David Dowd had been removed from labor relations duties.

m. That the Company prior to August 19 took no action known to the Local to repudiate the terms of Exhibit 8.

3. I find that by the end of the negotiating meetings on May 21 all terms (but not the language) of the proposed new contract had been agreed upon.

4. I find that the terms of the proposed new contract were ratified by Local on May 21.

5. I find that the exact language of the new contract was agreed upon at the meeting in Boston on May 28.

6. I find that Ellis and Hinchliffe who represented the Company at that meeting had apparent authority (based upon the above subsidiary findings) to agree to the language on behalf of the Company.

7. I find that Andonian was a representative of United and insofar as it is a question of fact that he had actual authority from United to negotiate and bind United to a not unusual form of labor contract.

8. I find that the contract here negotiated was not unusual in its terms.

9. Insofar as it is a question of fact, I find that Andonian had actual authority on behalf of United to agree to the terms and to the language that were in fact agreed upon at the negotiation meetings and at the meeting in Boston.

10. I find that Exhibit 8 is the language agreed upon.

11. I find that it was the intention of the persons at the Boston meeting that the language there agreed upon constituted the contract between the parties effective May 20, 1957.

12. I find that it was the intention of the persons on the Company and Local negotiating committees on May 21, that [fol. 53] if the Local ratified the terms, the language to be drafted covering the terms already agreed upon would constitute the contract and would be effective from May 20, 1957, for 18 months.

13. I am unable to find that it was the intention of the parties that the language of Exhibit 8 would not be binding unless and until it was formally executed by the parties.

14. I find that David Dowd had apparent authority to sign the stipulation on May 21, and that he in fact did sign it.

15. I find that Exhibit 8 was signed and delivered by D. Dowd, Vice President and Director of Company on August 2, 1957.

16. I find that David Dowd as Vice President and Director of the Company on August 2 had apparent authority to execute and deliver Exhibit 8.

17. I find that in addition to the Company acting in accordance with the terms of Exhibit 8 until sometime during the latter part of August, Mary Dowd at the conference with Andonian and Hinchliffe on August 19 came to an agreement as to the persons whose rate ranges would be eliminated and the amount of their new rate and I find that this agreement was in accordance with the final understanding of the negotiating committees reached during the negotiations.

18. I find that the Company and the Local acted in accordance with the terms of Exhibit 8 from May 21 to the latter part of August, 1957.

19. Insofar as it is a question of fact, I find that the actions of the Company from May 21 to the end of August

constituted a ratification of the terms agreed upon during the negotiations and spelled out in Exhibit 8.

20. I find that the signatures of the members of Local and of Andonian were affixed to Exhibit 8 on August 12.

21. I find that the signatures of the officers of United were affixed to Exhibit 8 between August 13 and September 12.

22. I find that Exhibit 8 with all signatures thereon were mailed to the Company on September 12 and received by the Company on September 13, 1957.

[fol. 54] 23. I find that Company sells a substantial part of its product and buys a substantial part of its supplies in interstate commerce.

24. Insofar as it is a question of fact, I find that Exhibit 8 is the collective bargaining agreement adopted by the parties on May 28, 1957 effective from May 20, 1957.

25. I find that Local is the bargaining agent of the employees of the Company.

Respectfully submitted,

Alfred N. Whiting, Master.

EXHIBIT 4 TO REPORT

CHARLES DOWD BOX CO.
Incorporated

NOTICE

June 5, 1957

Although the Contract has not yet been presented for review and signature, to show good faith on the part of Management, the negotiated increase of thirteen (13) cents will be included in this week's pay.

After the Contract has been formally signed, the increase for the prior weeks will be retroactive.

ANNA DOWD

ANNA DOWD
Asst Treas.

EXHIBIT 6 TO REPORT

CHARLES DOWD BOX CO.
Incorporated

August 30, 1957

NOTICE

As indicated in the notice of June 5th, that Management had not signed the proposed contract, but willingly made wage adjustments to show good faith until final clarifica-
[fol. 55] tion of the provisions of the contract were mutually understood.

We regret to advise at this time, that Management is not in full agreement with the provisions of the instrument as proposed and will not make further adjustments until mutually agreed upon between the Company and the Union.

CHARLES DOWD BOX CO. INC.

ANNA DOWD
Asst Treas.

* * * * * * *

[fol. 77]

IN THE SUPERIOR COURT OF WORCESTER COUNTY

DEFENDANT'S MOTION TO DISMISS FOR WANT OF JURISDICTION—Filed January 24, 1958

Now comes the defendant in the above entitled action and moves that the cause be dismissed for the reason that the Court has no jurisdiction over the subject matter of said action.

Charles Dowd Box Co., Inc., By Vaughan, Esty, Crotty & Mason, its attorneys

May 15, 1958 Denied. (Thompson, J.)

[fol. 78]

IN THE SUPERIOR COURT OF WORCESTER COUNTY

INTERLOCUTORY DECREE DENYING MOTION TO DISMISS BILL FOR WANT OF JURISDICTION—Entered May 22, 1958

This cause came on to be heard upon defendant's motion to dismiss for want of jurisdiction and was argued by counsel, and thereupon, upon consideration thereof, it is Ordered, Adjudged and Decreed that said motion be and hereby is denied.

By the Court, (Thompson, J.) Wilfred B. Feiga, Assistant Clerk.

IN THE SUPERIOR COURT OF WORCESTER COUNTY

APPEAL—Filed June 4, 1958

Now comes the defendant, Charles Dowd Box Company, Inc., in the above entitled action and appeals to the Supreme Judicial Court for the Commonwealth from the decree of the Superior Court denying defendant's Motion to Dismiss for Want of Jurisdiction.

Charles Dowd Box Company, Inc., By Vaughan, Esty, Crotty & Mason, Its Attorneys

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[fol. 93]

IN THE SUPERIOR COURT OF WORCESTER COUNTY

STIPULATION AS TO WAGES—October 26, 1959

It is stipulated by and between the parties hereto for the purposes of this case that the amounts in the column in the attached "Schedule A", which schedule is incorporated herein and made a part hereof as if fully set out at this point, entitled "Company Net Total", represents an accurate computation of wages and other benefits which, the defendant contends, would have been paid by the defendant to the employees listed in Schedule A, with the exception of the last three (3) employees named therein, had the defendant fully complied with the disputed contract (Exhibit 8* attached to the Master's prior report).

It is further stipulated that the amounts set forth in all columns for all listed employees are accurate computations of the wages and other benefits which, the plaintiffs contend, should be included in determining what wages and other benefits would have been paid by the defendant to the listed employees had the defendant fully complied with the said contract.

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* Exhibit 8 identical to Exhibit C of Bill of Complaint.

This stipulation is only for the purpose of establishing the accuracy of the data contained herein and it is understood that this stipulation shall not limit the right of either party to introduce further admissible evidence.

It is further stipulated that interest on any amounts assessed and awarded as damages to the individual plaintiffs, if interest is determined to be lawfully due the plaintiffs, may be computed at the legal rate from and after April 11, 1958, as if the full amounts so due had been payable on such date.

Nothing herein contained shall be construed to prejudice the right of the defendant to contest the power of the Master [fol. 94] to assess damages or interest in this matter or to contest the right of the plaintiffs, or any of them, for damages or interest thereon.

John F. Courtney et als., By: Grant, Angoff, Goldman & Manning, Their Attorneys, By: Warren H. Pyle;

Charles Dowd Box Co., Inc., By: Vaughan, Esty & Mason, Its Attorneys.

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[fol. 103]

IN THE SUPERIOR COURT OF WORCESTER COUNTY

FINAL DECREE—Entered February 23, 1960

This cause came on to be further heard and was argued by counsel; thereupon, upon consideration thereof, it is Ordered, Adjudged and Decreed that:

1—The contract between Charles Dowd Box Co., Inc. and the United Steelworkers of America, AFL-CIO, Exhibit 8 attached to the Master's Report herein, is valid and binding on the parties thereto.

2—The Defendant is indebted to the members of the class on whose behalf the named Complainants brought suit as is set forth below, together with interest from and after April 11, 1958 in the amounts set forth below, together with costs in the amount of $55.80 in toto.

3—The Defendant is ordered to pay the amounts set forth below to the members of the class named below.

Name	*Principal*	*Interest to 2/15/60*	*Total*
Clifford G. Allard	$282.31	31.24	$313.55
John P. Anderson	366.67	40.58	407.25
Julian T. Antanavica	82.49	9.13	91.62
George G. A. Asplund	377.07	41.73	418.80
[fol. 104]			
Pedro Augusto	387.79	42.92	430.71
Edwin G. Gannister	333.44	36.90	370.34
James A. Barr	350.19	38.76	388.95
Wilfred J. Benoit	286.30	31.68	317.98
Charles E. Blouin	178.93	19.80	198.73
Lehman L. Bolivar	310.64	34.38	345.02
Charles N. Bosley	174.36	19.30	193.66
Richard Boudreau	311.22	34.44	345.66
Francis R. Brailey	134.10	14.84	148.94
Raymond J. Brewer	367.88	40.71	408.59
Edwin C. Briggs	297.45	32.92	330.37
Charles L. Brown	381.02	42.17	423.19
Stanley J. Burdzel	251.55	27.84	279.39
Lewis R. Burnett	363.11	40.19	403.30
Joseph D. Carpinetti	102.33	11.32	113.65
Alfred Carrier	414.47	45.87	460.34
Frank Ceredona	350.04	38.74	388.78
Adelard Chamberland	343.70	38.04	381.74
Stephen V. Chiras	397.58	44.00	441.58
Margaret Ciccolini	332.69	36.82	369.51
Raymond E. Clark	342.57	37.91	380.48
Mihail Cocavessis	373.06	41.29	414.35
Earl E. Cofsky	367.02	40.62	407.64
Harvey J. Cofske	243.02	26.90	269.92
John W. Cofsky	365.72	40.47	406.19

Name	*Principal*	*Interest to 2/15/60*	*Total*
Walter E. Cofsky	356.42	39.45	395.87
Hector O. Courtemanche	186.81	20.67	207.48
John F. Courtney	311.30	34.45	345.75
Lester G. Cuddeback	573.26	63.44	636.70
Dimitri J. Dallas	74.64	8.26	82.90
William E. Davis	329.76	36.49	366.25
Michael J. Demoga	35.13	3.89	39.02
[fol. 105]			
Richard H. Desrosiers	452.39	50.07	502.46
Salvatore P. Distefano	518.25	57.35	575.60
Thomas G. Donnelly	17.70	1.96	19.66
Richard Drake	114.24	12.64	126.88
Richard W. Dumphy	519.56	57.50	577.06
Donald D. Elliot	89.33	9.89	99.22
Mary E. Emond	299.36	33.13	332.49
Roy Faneuff	341.82	37.83	379.65
Raymond C. Faubert	610.04	67.51	677.55
William Fitzgerald	355.72	39.37	395.09
Mary J. Foley	279.06	30.88	309.94
Joseph P.L. Gagne	316.70	35.05	351.75
Alfred Gagnon	350.23	38.76	388.99
Armand Gagnon	408.79	45.24	454.03
Edward F. Gilfoy	373.70	41.36	415.06
Louis Giorgio	13.28	1.47	14.75
Anthony Gircys	367.35	40.65	408.00
Donald B. Gullbrand	131.90	14.60	146.50
Evert J. Gustafson	281.11	31.11	312.22
Stanley Gustafson	402.17	44.51	446.68
William D. Hackett	116.35	12.88	129.33
James Harkins	371.87	41.15	413.02
Francis A. Hazzard	341.09	37.75	378.84
Robert Hearnlaye	183.99	20.36	204.35
Richard M. Heath	413.99	45.82	459.81
George E. Houle	386.40	42.76	429.16
William Hoye	431.21	47.72	478.93
Gordon E. Huckins	381.59	42.23	423.82
Joseph G. Ignasiak	514.11	56.90	571.01
Joseph R. Jacques	352.98	39.06	392.04

Name	*Principal*	*Interest to 2/15/60*	*Total*
Walter E. Johnson	182.75	20.22	202.97
John Kavorkian	401.41	44.42	445.83
[fol. 106]			
Charles DerKazarian	461.97	51.13	513.10
Richard I. Kemp	398.70	44.12	442.82
Chester F. Krakowski	149.09	16.50	165.59
John D. Krafve	132.87	14.70	147.57
Jonas Krisiulevicius	439.54	48.64	488.18
John Z. Kuderian	425.76	47.12	472.88
Lucian Laferriere	324.16	35.87	360.03
Clifford A. Lamere	421.72	46.67	468.39
William E. Lamonda	406.44	44.98	451.42
Carl H. Landin, Jr.	344.17	38.09	382.26
Henry J. Landry	301.53	33.37	334.90
Leon J. Latino	138.56	15.33	153.89
Calvin A. Lester	400.42	44.31	444.73
Clarence E. Lusignan	229.68	25.42	255.10
Joseph H. Marcotte	346.56	38.35	384.91
Raymond R. Martin	220.16	24.37	244.53
Lawrence G. McCarl	563.13	62.32	625.45
Eugene A. McClure	324.64	35.93	360.57
Thomas W. McLaughlin	276.07	30.55	306.62
Arthur H. McLean	472.24	52.26	524.50
John V. Miller	550.15	60.89	611.04
Arthur G. Monast	402.77	44.57	447.34
Raymond A. Mondville	465.54	51.52	517.06
Jack Mosley	356.53	39.46	395.99
Francis G. Mousseau	344.04	38.07	382.11
Robert D. Mullaney	432.39	47.85	480.24
Ronald M. Narva	416.24	46.07	462.31
Frederick C. Nist	429.31	47.51	476.82
Carl K. Orne	340.97	37.74	378.71
Johnson R. Paige	490.04	54.23	544.27
Robert A. Patterson	327.74	36.27	364.01
Einar R. Pearson	111.74	12.37	124.11
[fol. 107]			
Paul P. Pederson	586.47	64.90	651.37
Omer A. Perron	336.48	37.24	373.72

Name	*Principal*	*Interest to 2/15/60*	*Total*
Walter A. Petkiewicz	253.40	28.04	281.44
James P. Pignataro	390.96	43.27	434.23
Frederick J. Pilat	319.21	35.33	354.54
Theodore J. Plotczyk	404.62	44.78	449.40
Robert P. Prendiville	305.05	33.76	338.81
Armand Prunier	191.62	21.21	212.83
Stephen C. Publicover	434.32	48.07	482.39
Donald A. Rackauskas	424.90	47.02	471.92
Anthony Raudonis	375.15	41.52	416.67
Richard Raskett	183.88	20.35	204.23
Donald L. Raymond	467.39	51.73	519.12
Glenn A. Rich	474.25	52.49	526.74
Alfred G. Richard	369.13	40.85	409.98
Robert J. Richard	363.10	40.18	403.28
Roy M. Richardson	340.45	37.68	378.13
Robert W. Ritchie	275.31	30.47	305.78
Albert Roy	323.45	35.80	359.25
Camille G. Roy	341.48	37.79	379.27
Fernand R. Roy	377.12	41.74	418.86
Kenneth C. Robbins	454.72	50.32	505.04
Richard W. Robbins	20.13	2.23	22.36
John R. Ruggieri	384.50	42.55	427.05
John Rzeznikiewicz	328.97	36.41	365.38
Robert A. Santomenno	433.52	47.98	481.50
Arthur Senecal	420.58	46.55	467.13
Irene D. Sheard	299.53	33.15	332.68
John P. Shutts	456.60	50.53	507.13
Joseph J. Sliva	448.84	49.67	498.51
John T. Small	424.43	46.97	471.40
Allen G. Spangenberg [fol. 108]	398.02	44.05	442.07
Paul Spiewak	84.59	9.36	93.95
Harold L. Spinney	407.98	45.15	453.13
Robert C. Spring	457.60	50.64	508.24
Pauline M. Stumpf	291.63	32.27	323.90
Joseph A. Sutter	501.48	55.50	556.98
Richard G. Sweares	480.92	53.22	534.14
Arthur E. Taylor	170.76	18.90	189.66

Name	*Principal*	*Interest to 2/15/60*	*Total*
Leon A. Tebo	493.86	54.66	548.52
Napoleon C. Tetreault	405.61	44.89	450.50
Andres F. Tripaldi	580.77	64.27	645.04
Beverly Van Patten	248.08	27.46	275.54
Theodore R. Wilkins	303.40	33.58	336.98
Reino I. Williamson	349.91	38.72	388.63
Willis M. Woodman	468.85	51.89	520.74
John P. Zalieckas	553.49	61.25	614.74
Joseph A. Zalieckas	485.69	[illegible]	539.44
Edward J. Zylinski	405.69	44.90	450.59
Clifford T. Hartmen	372.71	41.25	413.96
Ralph A. Thulin	343.08	37.97	381.05

By the Court (Meagher, J.), Wilfred B. Feiga, Asst. Clerk.

Entered Feb. 23, 1960

The above decree may be entered

IN THE SUPERIOR COURT OF WORCESTER COUNTY

APPEAL—Filed March 14, 1960

Now comes the defendant, Charles Dowd Box Co., Inc., in the above entitled action and appeals to the Supreme [fol. 109] Judicial Court for the Commonwealth from the Final Decree of the Superior Court entered February 23, 1960.

Charles Dowd Box Co., Inc., by Vaughan, Esty, Crotty & Mason, Its Attorneys.

IN THE SUPERIOR COURT OF WORCESTER COUNTY

DOCKET ENTRIES

Sep. 6, 1957		Notice ordered to issue ret at Worcester on Thursday, Sept. 12, 1957 at 10 A.M. (Brogna, J. at Boston)
Sept. 9, 1957	1	Bill of Complaint filed & notice issued as ordered ret. at Worcester on Thursday, Sept. 12, 1957 at 10 A.M. Sub. issued ret. October ret. day, 1957
Sept. 17, 1957	2	Deft's demr. & ans. to Plffs' Bill of Complaint
Sept. 18, 1957	3	Appointment of stenographer:—Eleanor Jones, appt'd stenographer
Sept. 27, 1957		Demr. overruled. (Warner, J.)
	4	Int. decree overruling demr.
Oct. 2, 1957	5	Deft's appeal from Int. decree overruling demr.
	6	Deft's designation of record.
Oct. 3, 1957	7	Alfred N. Whiting, Esq. app't. Master, hearings to begin 10/10/57 & continue from day to day until completed. (Warner, J.)
Oct. 7, 1957	8	Return of service
Oct. 18, 1957		Notice under S.J.C. Rule 2(f) mailed to Judge Warner. Notices under S.J.C. Rule 2(f) as amended, Mailed to counsel of record.
Dec. 27, 1957	9	Master's report & deft's requests for rulings, requests for questions of law, objections to Master's report & Master's summary of evidence.
Jan. 22, 1958	10	Petitioners' mo. for decree on Master's report

Jan. 24, 1958	11	Deft's mo. to amend ans. & amendment.
[fol. 110]	12	Deft's mo. to dismiss for want of Jurisdiction.
	13	Deft's mo. for allowance of exceptions
	14	Deft's mo. to recommit to Master
Apr. 16, 1958	15	Mo. of deft. to discharge Master
	16	Mo. of deft. to strike out Report
May 15, 1958		Mo. #10 all'd. (Thompson, J.) Mo. #11 denied. (Thompson, J.) Mo. #12 denied. (Thompson, J.) Mo. #13 denied. (Thompson, J.) Mo. #14 denied. (Thompson, J.) Mo. #15 denied. (Thompson, J.) Mo. #16 denied. (Thompson, J.)
May 22, 1958	17	Int. Decree Denying mo. to amend ans.
	18	Int. Decree Denying mo. to Dismiss Bill for want of Jurisdiction
	19	Int. Decree Denying mo. for allowance of Exceptions.
	20	Int. Decree Denying mo. to discharge Master
	21	Int. Decree Denying mo. to recommit to Master
	22	Int. Decree allowing mo. for Decree on Master's Reports
	23	Int. Decree Denying mo. to strike out Report.
June 4, 1958	24	Deft's appeal from Decree denying deft's Mo. to dismiss for want of Jurisdiction
	25	Deft's designation on Motion to Dismiss for want of Jurisdiction.

	26	Deft's appeal from decree denying motion to Discharge Master
	27	Deft's designation Denying mo. to discharge Master.
	28	Deft's appeal from decree denying Motion to Recommit to Master.
June 4, 1958	29	Deft's designation on decree denying motion to Recommit to Master
[fol. 111]	30	Deft's appeal from decree denying mo. for allowance of exceptions
	31	Deft's designation on decree denying mo. for allowance of exceptions
	32	Deft's appeal from decree denying mo. to strike out report
	33	Deft's designation on decree denying mo. to strike out report
	34	Deft's appeal from decree denying mo. to amend answer.
	35	Deft's designation on decree denying mo. to amend answer.
	36	Deft's appeal from decree allowing Petr's mo. for decree on Master's report.
	37	Deft's designation on decree allowing Petr's mo. for decree Master's report
1959		
Mar. 23,	38	Plffs' mo. for relief on prayers
May 18,	39	Plffs' mo. for assessment of damages
May 22,		Re: Mo. # 39: Ordered briefs to be filed by June 8, 1959. (Meagher, J.)

June 19,	40	Int. decree: Mo. # 39 all'd., suit referred to Alfred N. Whiting, Esq., Master for assessment of damages only, hearings to begin July 7, 1959. (Meagher, J.) Notified 6/19/59
July 9,	41	Deft's appeal.
	42	Deft's designation
1960		
Jan. 22,	43	Master's supplemental report & deft's objections thereto. Notified 1/22/60.
Feb. 8,	44	Plffs' mo. to confirm Master's supplemental report.
	45	Plffs' mo. for final decree
Feb. 18		Mo. # 44 all'd. (Meagher, J.)
		Mo. # 45 all'd. (Meagher, J.)
[fol. 112] Feb. 23	46	Final decree. (Meagher, J.) Notified 2/23/60
Mar. 14,	47	Deft's appeal
	48	Deft's designation
Mar. 29,	49	Plffs' counter-designation
Apr. 1,		Notice under S.C. Rule 2 (f) mailed to Judge Meagher, Notices under S.J.C. 2 (f), as amended, mailed to counsel of record
May 5,		Notice that the case has become ripe for final preparation & printing mailed to Vaughan, Esty, Crotty & Mason
May 13,	50	Deft's order for preparation of the record for the Full Court of the S.J.C.
May 20,		Estimate mailed.
June 9,		Estimate paid

[fol. 115]

IN THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

RESCRIPT—November 7, 1960

In the case of

JOHN F. COURTNEY & OTHERS

—v.—

CHARLES DOWD BOX CO., INC.

pending in the Superior Court for the County of Worcester

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,—

Interlocutory decrees affirmed.

Final decree affirmed with costs of appeal.

By the Court, Frederick L. Quinlan, Clerk.

November 7, 1960

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 116]

IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

JOHN F. COURTNEY & OTHERS

—v.—

CHARLES DOWD BOX CO., INC.

OPINION

WILKINS, C.J.:

The plaintiffs, who are members of the United Steelworkers of America, AFL-CIO, and its Local 5158, both individually and on behalf of all the members, bring this bill in equity to enforce a collective bargaining agreement with the defendant. The defendant filed a demurrer to the bill and a "motion to dismiss" for want of jurisdiction, and appealed from interlocutory decrees overruling the demurrer and denying the motion to dismiss. The case was referred to a master. The defendant raises questions relating to the master, the hearings before him, and his reports. The final decree declared the agreement to be valid, and ordered the payment of specific amounts to members of the class for whom the suit was brought. The defendant appealed.

1. The defendant urges that "this action is within the purview of § 301(a) of the Labor Management Relations Act of 1947[1] (commonly referred to as the Taft-Hartley Act), 61 Stat. 156, 29 U. S. C. (1952) § 185, and that Congress in enacting said § 301 evidenced an intention to occupy the field of litigation involving violations of collective bargaining agreements when interstate commerce would be affected thereby." We do not accept the contention that

[1] "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act [chapter] . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

State courts are without jurisdiction. The statute does [fol. 117] not so declare. The conferring of jurisdiction in actions at law upon the appropriate District Courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction both at law and in equity in State courts. The case principally relied upon by the defendant, *Textile Wkrs. Union of America* v. *Lincoln Mills*, 353 U. S. 448, does not so state. In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction has been made exclusive, we shall not make what would be tantamount to an abdication of the hitherto undoubted jurisdiction of our own courts. Our decision in *Karcz* v. *Luther Mfg. Co.*, 338 Mass. 313, 317, has gone far to adumbrate the position now taken, namely that there is concurrent jurisdiction in Federal and State courts over suits for enforcement of a collective bargaining agreement. Other State court decisions are in accord. *McCarroll* v. *Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 57-60, cert. den. sub nom. *Los Angeles County Dist. Council of Carpenters* v. *McCarroll*, 355 U. S. 932. *Coleman Co. Inc.* v. *International Union, United Auto. Aircraft & Agricultural Implement Wkrs. of America (UAW-CIO)*, 181 Kans. 969, 973-974. *Steinberg* v. *Mendel Rosenzweig Fine Furs, Inc.*, 9 Misc. 2d (N. Y.) 611. *Anchor Motor Freight N. Y. Corp.* v. *Local Union No. 445 of the Intl. Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America*, 171 N. Y. S. 2d 506, 509. *General Elec. Co.* v. *International Union, United Auto. Aircraft & Agricultural Implement Wkrs. of America*, 93 Ohio App. 139, 153-156, app. dism. 158 Ohio St. 555. *Springer* v. *Powder Power Tool Corp.*, Ore. , .[1] *General Bldg. Contrac-*
[fol. 118] *tors' Assn.* v. *Local Union No. 542*, 370 Pa. 73, 79-80. *Philadelphia Marine Trade Assn.* v. *International Longshoremen's Assn., Local Union No. 1291*, 382 Pa. 326, 332-333.

The defendant's "motion to dismiss" for want of jurisdiction was rightly denied. No other ground of demurrer has been argued. The demurrer was rightly overruled.

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[1] 348 Pac. 2d 1112, 1113-1114.

2. On October 3, 1957, the case was referred to a master under the usual rule "to hear the parties, find the facts and report his findings to the court, together with such questions of law, arising in the course of his duty, as any party may request." Rule 86 of the Superior Court (1954).

The master's report was filed on December 27, 1957. On January 22, 1958, the plaintiffs filed a motion that the Court "enter a decree in accordance with the findings, rulings and decision of the master's reports [*sic*] filed in the above matter." On May 15, 1958, this was allowed by indorsement on the motion, and on May 22 an interlocutory decree was entered also allowing the motion. From this decree the defendant appealed. On June 19 the plaintiffs' motion "for assessment of damages" was allowed in an interlocutory decree, which also referred the suit to the same master "for the assessment of damages only." From this decree the defendant also appealed. On January 22, 1960, a "master's supplemental report" was filed. A motion to confirm the supplemental report was allowed on February 18, 1960. The final decree was entered on February 23, and the defendant appealed.

The allowance of the motion for a decree in accordance with the report was irregular. The report first should have [fol. 119] been expressly confirmed. "The findings of the master are entitled to no weight whatever until established by confirmation." *Peteros* v. *Peteros,* 328 Mass. 416, 421, and cases cited. The defendant argues that the allowance of the motion was an implied confirmation of the report, and we agree. It does not follow, however, as the defendant also contends, that the judge was without power to recommit the report to the master for the finding of further facts, to wit, as to damages. The expression of the motion in the terms of the assessment of damages was, at most, a formal defect which did not destroy the substance of the judge's action in allowing it. In *Cutter* v. *Arlington Casket Co.,* 255 Mass. 52, 57, it was said, "Upon the coming in of a master's report the court in its discretion may overrule the exceptions thereto, confirm that report and recommit the case to the master for further report without request of the parties, if the nature of the matter under consideration requires further investigation and finding of further facts

not inconsistent with the confirmed report; for example, the statement of an account between persons found by the report to be partners or to stand in a fiduciary relation to each other." The case at bar presents a similar situation. A like practice was followed in *Flynn* v. *Curtis & Pope Lumber Co.*, 245 Mass. 291, 293. In the case at bar the judge's action was in the interest of avoiding delay in the termination of the controversy, and is to be looked upon with favor. See *Eastern Bridge & Structural Co.* v. *Worcester Auditorium Co.*, 216 Mass. 426, 431.

3. The defendant argues that the master exceeded the scope of his authority in that the bill alleged that there was a written contract and the master found that there [fol. 120] was an oral one. We are of opinion that this contention is not sustained by the record, and we shall not unduly prolong this opinion by refuting it in detail.

The defendant argues that there was error in the implied denial of four requests submitted to the master. We disagree. Requests numbered 3 and 21, which in substance seem to be founded upon the theory that the agreement proved was oral, could not have been given. Request numbered 1, to the effect that the scope of the master's report and his findings were limited by the pleadings, and request numbered 2, to the effect that the bill seeks the enforcement of a written agreement, have been given adequate effect in the entry of the final decree and in this opinion. The decree established the facts found by the master as facts in the case. It was the duty of the trial judge and is the duty of this court on appeal from the final decree to see that the final decree is such as the law requires upon the facts found by the master and the proper inferences therefrom. *Foot* v. *Bauman*, 333 Mass. 214, 219, and cases cited.

4. The master did not err in the challenged rulings on evidence. As the defendant's argument is scarcely more than a suggestion of error, our discussion will be nearly as brief. In so far as one Andonian, "representative of United," was asked on the witness stand as to his own authority this was admissible. *DuBois* v. *Powdrell*, 271 Mass. 394, 397, and cases cited. In so far as he was asked what had been said during the negotiations by one Ellis,

labor relations consultant for the defendant, as to the authority of the defendant's committee, there was independent evidence of the committee's authority. *Id.* Restatement: Agency (2d) § 285. Also, as there was no specific objection, the evidence was admissible to show for whom [fol. 121] the members purported to act. *Wilson* v. *Davison*, 242 Mass. 237, 242. *Friend Lumber Co. Inc.* v. *Armstrong Bldg. Finish Co.*, 276 Mass. 361, 367-368. *Commonwealth* v. *Connolly*, 308 Mass. 481, 492-493. Requests numbered 6, 7, 8, and 9 presented to the master are not shown to have been erroneously denied.

5. The record contains 113 printed pages. Neither brief is a compliance with Rule 15 of the Rules for the Regulation of Practice before the Full Court (1952) as amended, 337 Mass. 818-819, which requires reference by pages to the record in stating alleged facts and previous proceedings. Had appropriate motions been made, we might have struck the briefs from the files. See *Marshall* v. *Crane*, Mass. .[1] In a suitable case we stand ready to take such action of our own motion.

6. Let the following entries be made: Interlocutory decrees affirmed. Final decree affirmed with costs of appeal.

So Ordered. —

[fol. 122]

IN THE SUPERIOR COURT OF WORCESTER COUNTY

JOHN F. COURTNEY, *et al.*

—v.—

CHARLES DOWD BOX CO., INC.

FINAL DECREE AFTER RESCRIPT—Entered December 5, 1960

This cause came on to be further heard after rescript from the Supreme Judicial Court and was argued by coun-

[1] Mass. Adv. Sh. (1959) 1619.

sel; thereupon, upon consideration thereof, it is Ordered, Adjudged and Decreed that:

1—The Contract between Charles Dowd Box Co., Inc. and the United Steelworkers of America, AFL-CIO, Exhibit 8 attached to the Master's Report herein, is valid and binding on the parties thereto.

2—The Defendant is indebted to the members of the class on whose behalf the named Complainants brought suit as is set forth below, together with interest from and after April 11, 1958 in the amounts set forth below, together with costs in the amount of $73.30.

3—The Defendant is ordered to pay forthwith the amounts set forth below to the members of the class named below.

[fol. 123]

Name	*Principal*	*Interest to 12/5/1960*	*Total*
Clifford G. Allard	$282.31	$44.92	$327.23
John P. Anderson	366.67	58.34	425.01
Julian T. Antanavica	82.49	13.12	95.61
George G. A. Asplund	377.07	59.99	437.06
Pedro Augusto	387.79	61.70	449.49
Edwin B. Gannister	333.44	53.05	386.49
James A. Barr	350.19	55.72	405.91
Wilfred J. Benoit	286.30	45.55	331.85
Charles E. Blouin	178.93	28.47	207.40
Lehman L. Bolivar	310.64	49.42	360.06
Charles N. Bosley	174.36	27.74	202.10
Richard Boudreau	311.22	49.52	360.74
Francis R. Brailey	134.10	21.34	155.44
Raymond J. Brewer	367.88	58.53	426.41
Edwin C. Briggs	297.45	47.32	344.77
Charles L. Brown	381.02	60.62	441.64
Stanley J. Burdzel	251.55	40.02	291.57
Lewis R. Burnett	363.11	57.77	420.88
Joseph D. Carpinetti	102.33	16.28	118.61
Alfred Carrier	414.47	65.94	480.41

Name	*Principal*	*Interest to 12/5/1960*	*Total*
Frank Ceredona	350.04	55.69	405.73
Adelard Chamberland	343.70	54.68	398.38
Stephen V. Chiras	397.58	63.25	460.83
Margaret Ciccolini	332.69	52.93	385.62
Raymond E. Clark	342.57	54.50	397.07
Mihail Cocavessis	373.06	59.35	432.41
Earl E. Cofsky	367.02	58.39	425.41
[fol. 124]			
Harvey J. Cofsky	243.02	38.66	281.68
John W. Cofsky	365.72	58.19	423.91
Walter E. Cofsky	356.42	56.71	413.13
Hector O. Courtemanche	186.81	29.72	216.53
John F. Courtney	311.30	49.53	360.83
Lester G. Cuddeback	573.26	91.21	664.47
Dimitri J. Dallas	74.64	11.88	86.52
William E. Davis	329.76	52.46	382.22
Michael J. Demoga	35.13	5.59	40.72
Richard H. Desrosiers	452.39	71.98	524.37
Salvatore P. Distefano	518.25	82.45	600.70
Thomas G. Donnelly	17.70	2.82	20.52
Richard Drake	114.24	18.18	132.42
Richard W. Dumphy	519.56	82.66	602.22
Donald D. Elliot	89.33	14.21	103.54
Mary E. Emond	299.36	47.63	346.99
Roy Faneuff	341.82	54.38	396.20
Raymond C. Faubert	610.04	97.06	707.10
William Fitzgerald	355.72	56.60	412.32
Mary J. Foley	279.06	44.40	323.46
Joseph P. L. Gagne	316.70	50.39	367.09
Alfred Gagnon	350.23	55.72	405.95
Armand Gagnon	408.79	65.04	473.83
Edward F. Gilfoy	373.70	59.46	433.16
Louis Giorgio	13.28	2.11	15.39
Anthony Gircys	367.35	58.45	425.80
Donald B. Gullbrand	131.90	20.99	152.89
Evert J. Gustafson	281.11	44.72	325.83
Stanley Gustafson	402.17	63.99	466.16

[fol. 125]

Name	*Principal*	*Interest to 12/5/1960*	*Total*
William D. Hackett	116.35	18.51	134.86
James Harkins	371.87	59.16	431.03
Francis A. Hazzard	341.09	54.27	395.36
Robert Hearnlaye	183.99	29.27	213.26
Richard M. Heath	413.99	65.87	479.86
George E. Houle	386.40	61.48	447.88
William Hoye	431.21	68.61	499.82
Gordon E. Hutchins	381.59	60.71	442.30
Joseph G. Ignasiak	514.11	81.79	595.90
Joseph R. Jacques	352.98	56.16	409.14
Walter E. Johnson	182.75	29.08	211.83
John Kavorkian	401.41	63.86	465.27
Charles DerKazarian	461.97	73.50	535.47
Richard I. Kemp	398.70	63.43	462.13
Chester F. Krakowski	149.09	23.72	172.81
John D. Krafve	132.87	21.14	154.01
Jonas Krisiulevicius	439.54	69.93	509.47
John Z. Kuderian	425.76	67.74	493.50
Lucian Laferriere	324.16	51.57	375.73
Clifford A. Lamere	421.72	67.10	488.82
William E. Lamonda	406.44	64.66	471.10
Carl H. Landin, Jr.	344.17	54.76	398.93
Henry L. Landry	301.53	47.97	349.50
Leon J. Latino	138.56	22.04	160.60
Calvin A. Lester	400.42	63.71	464.13
Clarence E. Lusignan	229.68	36.54	266.22
Joseph H. Marcotte	346.56	55.14	401.70
Raymond R. Martin	220.16	35.03	255.19
[fol. 126]			
Lawrence G. McCarl	563.13	89.59	652.72
Eugene A. McClure	324.64	51.65	376.29
Thomas W. McLaughlin	276.07	43.92	319.99
Arthur H. McLean	472.24	75.13	547.37
John V. Miller	550.15	87.53	637.68
Arthur G. Monast	402.77	64.08	466.85
Raymond A. Mondville	465.54	74.07	539.61

Name	*Principal*	*Interest to 12/5/1960*	*Total*
Jack Mosley	356.53	56.72	413.25
Francis G. Mousseau	344.04	54.74	398.78
Robert D. Mullaney	432.39	68.79	501.18
Ronald M. Narva	416.24	66.22	482.46
Frederick C. Nist	429.31	68.30	497.61
Carl K. Orne	340.97	54.25	395.22
Johnson R. Paige	490.04	77.97	568.01
Robert A. Patterson	327.74	52.14	379.88
Einar R. Pearson	111.74	17.78	129.52
Paul P. Pederson	586.47	93.31	679.78
Omer A. Perron	336.48	53.53	390.01
Walter A. Petkiewicz	253.40	40.32	293.72
James P. Pignataro	390.96	62.20	453.16
Frederick J. Pilat	319.21	50.79	370.00
Theodore J. Plotczyk	404.62	64.38	469.00
Robert P. Prendiville	305.05	48.53	353.58
Armand Prunier	191.62	30.49	222.11
Stephen C. Publicover	434.32	69.10	503.42
Donald A. Rackauskas	424.90	67.60	492.50
Anthony Raudonis	375.15	59.69	434.84
Richard Raskett	183.88	29.26	213.14
[fol. 127]			
Donald L. Raymond	467.39	74.36	541.75
Glenn A. Rich	474.25	75.45	549.70
Alfred G. Richard	369.13	58.73	427.86
Robert J. Richard	363.10	57.77	420.87
Roy M. Richardson	340.45	54.17	394.62
Robert W. Ritchie	275.31	43.80	319.11
Albert Roy	323.45	51.46	374.91
Camille G. Roy	341.48	54.33	395.81
Fernand R. Roy	377.12	60.00	437.12
Kenneth C. Robbins	454.72	72.35	527.07
Richard W. Robbins	20.13	3.20	23.33
John R. Ruggieri	384.50	61.17	445.67
John Rzeznikiewicz	328.97	52.34	381.31
Robert A. Santomenno	433.52	68.97	502.49
Arthur Senecal	420.58	66.91	487.49

Name	*Principal*	*Interest to 12/5/1960*	*Total*
Irene D. Sheard	299.53	47.66	347.19
John P. Shutts	456.60	72.65	529.25
Joseph J. Sliva	448.84	71.41	520.25
John T. Small	424.43	67.53	491.96
Allen G. Spangenberg	398.02	63.32	461.34
Paul Spiewak	84.59	13.46	98.05
Harold L. Spinney	407.98	64.91	472.89
Robert C. Spring	457.60	72.80	530.40
Pauline M. Stumpf	291.63	46.40	338.03
Joseph A. Sutter	501.48	79.79	581.27
Richard G. Sweares	480.92	76.51	557.43
Arthur E. Taylor	170.76	27.17	197.93
[fol. 128]			
Leon A. Tebo	493.86	78.57	572.43
Napoleon C. Tetreault	405.61	64.53	470.14
Andres F. Tripaldi	580.77	92.40	673.17
Beverly Van Patten	248.08	39.47	287.55
Theodore R. Wilkins	303.40	48.27	351.67
Reino I. Williamson	349.91	55.67	405.58
Willis M. Woodman	468.45	74.59	543.44
John P. Zalieckas	553.49	88.06	641.55
Joseph A. Zalieckas	485.69	77.27	562.96
Edward J. Zylinski	405.69	64.55	470.24
Clifford T. Hartman	372.71	59.30	432.01
Ralph A. Thulin	343.08	54.58	397.66

4—The clerk shall issue a writ of execution upon this Decree.

By the Court (Peece, J.)

Entered December 5, 1960

The above Decree may be entered.

Wilfred B. Feiga, Assistant Clerk.

[fol. 129] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 130]

SUPREME COURT OF THE UNITED STATES

No. 641—October Term, 1960

CHARLES DOWD BOX CO., INC., Petitioner,

—v.—

JOHN F. COURTNEY, et al., etc.

ORDER ALLOWING CERTIORARI—February 20, 1961

The petition herein for a writ of certiorari to the Superior Court of the Commonweath of Massachusetts, Worcester County, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
JAN 9 1961
JAMES R. BROWNING, Clerk

Supreme Court of the United States.

OCTOBER TERM, [redacted] 1961

No. ~~641~~ 33

CHARLES DOWD BOX CO., INC.,
Petitioner,

v.

JOHN F. COURTNEY ET ALS., AS THEY FAIRLY REPRESENT THE MEMBERSHIP OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 5158,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

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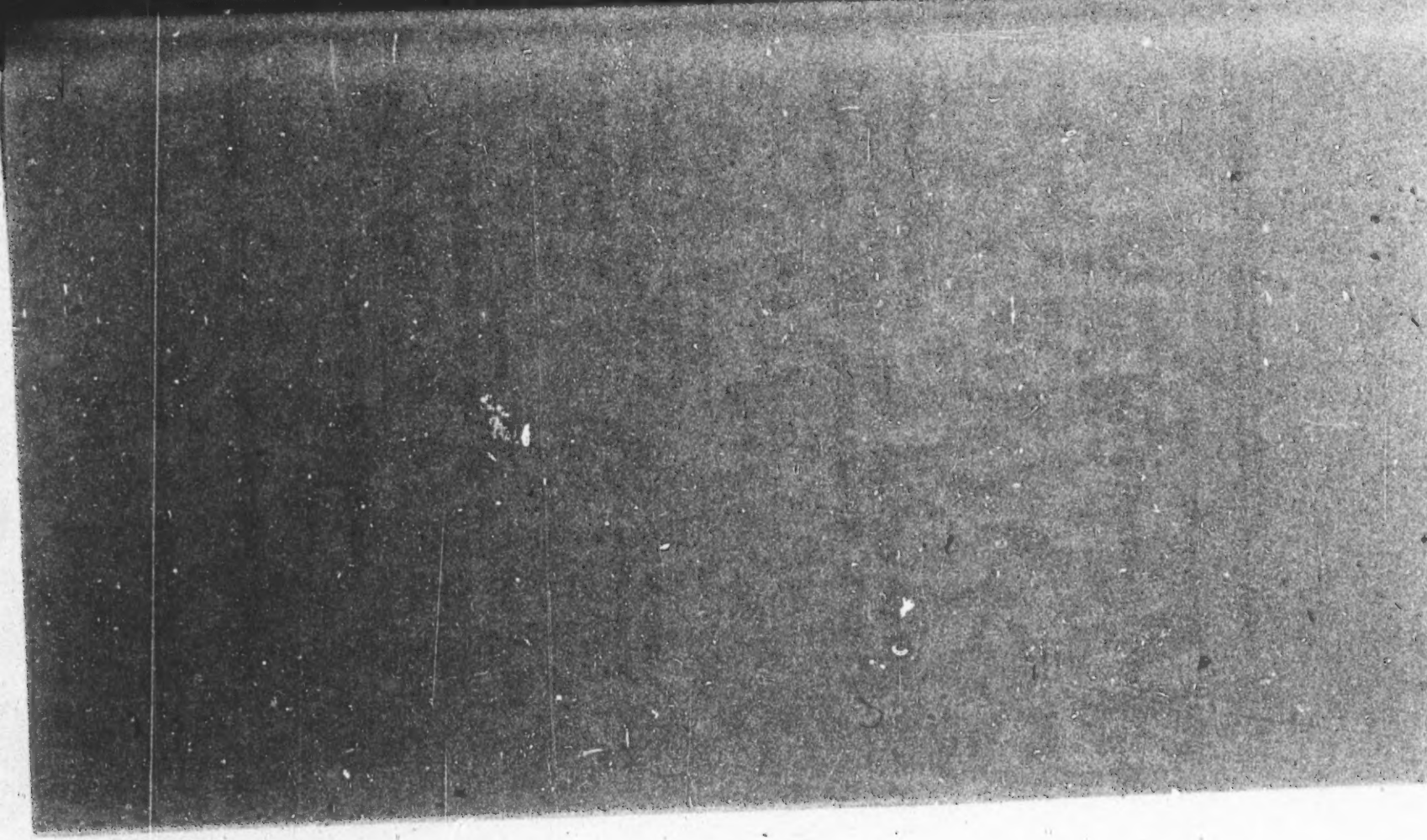

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Supreme Court of the United States.

OCTOBER TERM, 1960.

No.

CHARLES DOWD BOX CO., INC.,
Petitioner,

v.

JOHN F. COURTNEY ET ALS., AS THEY FAIRLY REPRESENT THE MEMBERSHIP OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 5158,*
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

Petitioner prays that a writ of certiorari be issued by this court to require the certification to it by the Superior Court for the County of Worcester in the Commonwealth of Massachusetts of the record in the case of *John F. Courtney et ali.* v. *Charles Dowd Box Co., Inc.*, No. 122913 on the docket of that court, wherein a final decree has been entered after rescript from the Supreme Judicial Court of the Commonwealth of Massachusetts in accordance with the opinion of the said Supreme Judicial Court for said Commonwealth.

*The names of the individual plaintiffs (now respondents to this petition) are set forth on page 1 of the record.

Citations to Opinion Below.

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts is reported in the Massachusetts Advance Sheets (1960) at pages 1085-1090 and at 160 N.E. 2d 885. A copy of said opinion is printed in Appendix A to this petition, *infra*, p. 15.

Jurisdiction.

The decision of the Full Court of the Supreme Judicial Court of the Commonwealth of Massachusetts was rendered on November 7, 1960. The final decree of the Superior Court after rescript and in accordance with the opinion of the Supreme Judicial Court was entered on December 5, 1960. A copy of said final decree after rescript is printed in Appendix B to this petition (*infra*, p. 21). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. The applicable portion of section 1257 reads as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . . . .
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

The federal question sought to be reviewed in this proceeding was raised specifically in the Superior Court action by demurrer of the petitioner (R. 39, 40), and later in that action by a motion to dismiss for want of jurisdiction (R. 77). The demurrer was overruled (R. 44) and the motion to dismiss was denied (R. 78). The federal question sought to be reviewed was raised at the earliest possible stage of the state court proceedings, and was in accordance with good practice in the Superior Court for the Commonwealth of Massachusetts.

The opinion of the Supreme Judicial Court (Appendix A hereto, p. 15), although adverse to the petitioner's position with respect to the federal question herein presented, indicates that the federal question was duly and seasonably presented in the lower court.

This petition is for a writ addressed to the Superior Court of the Commonwealth of Massachusetts rather than to the Supreme Judicial Court, the court of last resort in said Commonwealth, since the Superior Court is possessed of the record in the state court action and has entered the final decree in that case.

Mass. G.L. (Ter. Ed.) c. 212, § 9.
Central New England Railway Co. v. *Boston & Albany Railroad Co.*, 279 U.S. 415, 417.
Myers v. *International Trust Co.*, 273 U.S. 380, 381.

Question Presented.

Whether Congress, in enacting section 301 (a) of the Labor-Management Relations Act of 1947 (commonly referred to as the Taft-Hartley Act), 61 Stat. 156, 29 U.S.C. § 185, pre-empted to the exclusive jurisdiction of the federal courts that field of litigation involving violations

of collective bargaining agreements when interstate commerce would be affected thereby.

Statute Involved.

The statutory provision involved is section 301 (a) of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. § 185, p. 180. Section 301 (a) reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Statement.

The respondents, who are members of the United Steelworkers of America, AFL-CIO, and its Local 5158, both individually and on behalf of all members of the United Steelworkers of America, AFL-CIO (hereinafter referred to as "United"), and on behalf of all members of said Local 5158 (hereinafter referred to as "Local"), brought a bill in equity (R. 1) in the Superior Court of the Commonwealth of Massachusetts to enforce an alleged collective bargaining agreement with the petitioner, "Exhibit C" (R. 7). The bill of complaint contained prayers for preliminary and permanent injunctions (R. 5), and sought damages for a purported breach of the alleged collective bargaining agreement (R. 5).

The defendant filed a demurrer and answer to the bill of complaint (R. 39), the demurrer raising the federal

question set forth above (R. 40). The demurrer of the defendant was overruled (R. 44) and the defendant appealed (R. 44) to the Supreme Judicial Court for the Commonwealth of Massachusetts. The case was referred by the lower court to a master, who held hearings on the merits of the case and filed his report (R. 45). The petitioner filed objections to the report of the master (R. 59) and filed a motion to dismiss for want of jurisdiction, again raising the federal question set forth above (R. 77). The exceptions of petitioner to the master's report were denied (R. 78, 79) and the motion to dismiss for want of jurisdiction was also denied (R. 78). The case was later recommitted to the master for assessment of damages (R. 85), the master filed a supplemental report (R. 86), and a final decree was entered in the Superior Court (R. 103). From this final decree, from the adverse rulings and decrees of the Superior Court on the federal questions involved and from other interlocutory decrees not material to this petition, the petitioner appealed to the Supreme Judicial Court for the Commonwealth of Massachusetts. The Supreme Judicial Court rendered its opinion (Appendix A hereto) on November 7, 1960, a rescript was received by the Superior Court, and a final decree after rescript (Appendix B hereto, p. 21) was entered in the said Superior Court for Worcester County. The said opinion of the Supreme Judicial Court was adverse to the petitioner's contention that section 301 (a) of the Labor-Management Relations Act precluded state court jurisdiction over the subject matter of section 301 type cases.

Reasons for Granting the Writ.

1. The lower court action raised a substantial and far-reaching federal question of major importance in the area

of conflict between state and federal jurisdiction in the labor law field.

That that action fell within the contemplation of section 301 is clear, for it was a class action wherein the plaintiffs were allegedly fairly representative of the Local and the United. The named plaintiffs in the lower court action were the vehicle for maintaining the United's right of action, for the United was allegedly the party contracting with the defendant (R. 7, 47). The plaintiffs in the state court action sought specific performance of each provision of the purported collective bargaining agreement, injunctions in aid of enforcement, and damages (R. 4, 5). The bill of complaint states in detail (R. 3, 4) those items contained in Exhibit C (R. 7) which the plaintiffs sought specifically to enforce. If this list of items and the provisions of Exhibit C are examined, it is evident that more than uniquely personal rights of the employees of the petitioner were the subject matter of the suit, and that the United and the Local had interests in many provisions of that document, such as article I (R. 7, 8), providing for the recognition of the union, and article XX, providing for union shop and check-off (R. 25). These were of vital concern to the United and the Local. This is not a case such as *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, which was merely a suit by the union on behalf of 4000 employees to recover a day's pay for each. The fact that specific performance is sought does not take this suit out of the section 301 area.

Textile Workers Union of America v. *Lincoln Mills of Alabama*, 353 U.S. 448.

The master expressly found in his report (R. 45) that the petitioner sold containers in interstate commerce and

purchased substantial supplies in interstate commerce. In addition, the master found in his specific finding No. 23 (R. 54):

> "I find that Company sells a substantial part of its products and buys a substantial part of its supplies in interstate commerce."

Thus the state court action in which the United sought to enforce more than purely personal rights of employees, and in which it and the Local clearly had an interest, falls within section 301 of the Labor-Management Relations Act of 1947. The opinion of the Supreme Judicial Court, printed in Appendix A hereto (*infra*, p. 15), clearly indicates that that Court so considered the case.

2. There is a conflict among the decided cases as to whether Congress, by enacting section 301 as quoted above, intended to occupy the field of litigation involving suits for breaches of collective bargaining agreements where interstate commerce would be affected.

In *Fay* v. *American Cystoscope Makers*, 98 F. Supp. 278, 280-281, which involved a motion to remand to the state court, after a breach of contract suit by the union had been removed by the union to the federal District Court, the latter court said, in denying the motion:

> "To hold otherwise would vest the plaintiff with power to withhold from a defendant the use of the forum which Congress has chosen to make available.
>
> "Such power in the plaintiff could only be justified if Section 185 left intact a separate and independent state cause of action for contract between unions and employers where the component of interstate com-

merce was present. If that were the fact, plaintiff might properly rely on the principal that he may elect to rely upon whichever law he desires . . . however, in the light of the determination that the Section creates a new, Federal, substantive right, . . . it seems clear that Congress pre-empted the field in this area.

"The suggestion that the plaintiff should be permitted to compel defendant to litigate a federal claim in the State Court when Congress has explicitly made available a Federal forum is indefensible. Motion to remand is denied."

In *International Plainfield Motor Co.* v. *Local #343*, 123 F. Supp. 683, 692, the court held, in construing section 301:

"Congress not only has created a substantive right in the exercise of its power under Article I, Section 8, cl. 3 of the Federal Constitution, the commerce clause, but it has also provided both the procedure for enforcing that right and the forum in which disputes between the employer and the labor union should be heard . . .

"Since the Federal Court has been provided as the forum in which disputes of this nature are determined, *no other forum is available.*" (Emphasis supplied.)

See also *U.A.W.* v. *Buffalo Springfield Roller Co.*, 131 F. Supp. 667, 668.

In *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 210 F. 2d 623, 629-630, n. 16, the court indicated:

"There is no such choice of forums under Section 301, seemingly indicating that Congress intended to pre-empt to the Federal Courts litigation on collective bargaining contracts."

This last statement in the Third Circuit opinion in *Westinghouse* was not disputed nor in any way modified by Mr. Justice Frankfurter in announcing the decision of this Court when the *Westinghouse* case came before this Court and was reversed on other grounds. In addition, the Third Circuit opinion in *Westinghouse* was cited in the *Lincoln Mills* case, and again the foregoing statement, with reference to pre-emption, was not modified or disputed.

Prior to the decision in the *Lincoln Mills* case there was some question and split of authority concerning whether or not section 301 was a procedural statute, merely enabling unions to sue and be sued in federal courts, or whether, by enacting section 301, Congress intended to create a substantive body of law and thus create a remedy. The *Lincoln Mills* case resolved that conflict once and for all, and held that substantive rights were created by the enactment of section 301, and that that section is more than jurisdictional—that it dictates that federal courts shall fashion a federal body of law. The prophetic opinion of Judge Wyzanski in *Textile Workers* v. *Thread Co.*, 113 F. Supp. 137, was reinstated by *Lincoln Mills* after having a shadow cast upon it by the Supreme Court in the *Westinghouse* case.

The petitioner contends that an inference of pre-emption in areas of litigation encompassed by section 301 as above quoted, to the exclusion of state courts, is warranted from the following language from the opinion of Mr. Justice Douglas in the *Lincoln Mills* case, for the Court said at pages 455-457:

"Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.

. . . . . .

"The question then is, what is the substantive law to be applied in suits under § 301 (a)? We conclude that the substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws. . . . Federal interpretation of the federal law will govern, not state law. Cf. *Jerome* v. *United States*, 318 U. S. 101, 104.

. . . . . .

"It is not uncommon for *federal courts* to *fashion federal* law where *federal rights* are concerned. . . . Congress has indicated by § 301 (a) the purpose to follow that course here. . . . The power of Congress to regulate these labor-management controversies under the Commerce Clause is plain. . . . A case or controversy arising under § 301 (a) is, therefore, one within the purview of judicial power as defined in Article III." (Emphasis supplied.)

The *Lincoln Mills* decision thus was in accordance with prior lower court decisions, such as *Fay* v. *American Cystoscope Makers*, 98 F. Supp. 278, 280-281, construing the provisions of section 301, and, as pointed out above, did not dispute the statement in the Third Circuit opinion in the *Westinghouse* case indicating federal pre-emption.

Opposed to the foregoing decisions are some opinions of state courts which have been reluctant to hold that by the

enactment of section 301 they were precluded in appropriate cases from exercising jurisdiction.

McCarroll v. *Los Angeles County District Counsel of Carpenters*, 49 Cal. 2d 45, 57-60.
Coleman Co., Inc., v. *International Union, United Auto, Aircraft and Agricultural Implement Workers of America*, 181 Kans. 969.

It is the petitioner's position that the interpretation placed on section 301 by such state courts is in conflict with the language contained in the *Lincoln Mills* opinion and does not foster the formation of the uniform body of federal law in this area which was contemplated by Congress and by this Court in the *Lincoln Mills* case. While a state court may naturally tend to resist limitations of its jurisdiction, if such an interpretation prevails, forum shopping will result, and the converse of the difficulties which surrounded the federal courts prior to *Erie R. Co.* v. *Tompkins*, 304 U.S. 64, will inevitably occur.

The erroneous state court interpretation has already spawned anomalous results. In the case of *Swift & Co.* v. *United Packing House Workers of America*, 177 F. Supp. 511, a state court action was commenced by the employer and the union removed the case to the federal District Court. On the employer's petition to remand the action to the state court it was held that, as to the prayer for an injunction, that portion of the case should be remanded. The District Court, however, did not remand that portion of the case in which the plaintiff sought damages, since section 301 specifically provided for original jurisdiction. The cause of action was thus split and the possibility of conflicting decisions of two courts on the same factual situation was created.

Surely Congress, in enacting section 301, did not intend to create the possibility of forum shopping or split causes of action. Congress, in enacting section 701 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 (p. 541), has recently reaffirmed the proposition that states can act in labor relations areas only when not in conflict with federal jurisdiction. This statute, in eliminating the "no man's land" created by *Garner* v. *Teamsters Union No. 776*, 346 U.S. 485, and in superseding the *Garmon* decision (*San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236), resolves the question of federal-state labor relations in favor of the federal government, for not until federal jurisdiction is declined can state courts act.

The decision of the court below is believed to be erroneous and in conflict with the intention of Congress in enacting section 301. Settlement of this question by this Court is of prime importance to the public, since it is likely to be presented in virtually every suit for breach of collective bargaining agreements initiated in any state court. In Massachusetts alone the question has been considered on three occasions within the last two years. In *Karcz* v. *Luther Mfg. Co.*, 338 Mass. 313, 317, the Supreme Judicial Court first hinted the position it would take on this federal question. In the opinion annexed hereto as Appendix A the Supreme Judicial Court took a definite stand. In the latest Massachusetts decision touching this point (*Caton* v. *Reuther*, 1960 Adv. Sh. 1333, 1337), the Supreme Judicial Court has indicated that it still has misgivings concerning this federal question and that it would welcome guidance from this Court:

> "Upon the unduly general allegations of the bill we are not now in a position to rule, in advance of a hearing on the merits, whether the bill presents only

matters committed exclusively to Federal agencies and courts by congressional enactments affecting labor relations. See *Karcz* v. *Luther Mfg. Co.* 338 Mass. 313, 317; *Courtney* v. *Charles Dowd Box Co. Inc.* Mass. , .[a] For reasons stated in the *Courtney* case, we would be reluctant to hold that State courts cannot pass upon controversies of this character before decisions of the Supreme Court of the United States have more completely defined the extent to which the Labor Management Relations Act of 1947, 29 U. S. C. (1958) § 141 et seq., and the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§ 401-531, esp. § 501 (1959 Supp.), 73 Stat. 519, 532-537, have precluded State courts from taking jurisdiction of such controversies. See *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 241-247, and concurring opinion at pp. 250-254."

[a] Mass. Adv. Sh. (1960) 1085, 1086.

It is thus evident that until this Court makes clear its pronouncement on this vital issue, conflicting decisions of lower courts will continue.

Conclusion.

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

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Appendix A.

ADVANCE SHEETS

OPINIONS OF THE SUPREME JUDICIAL COURT

Published under authority of Chapter 478 of Acts of 1943

University Press, 11 Leon Street, Boston 15, Mass.

JOHN F. COURTNEY & others *vs.* CHARLES DOWD BOX CO., INC.

Worcester. September 27, 1960. — November 7, 1960.

Present: WILKINS, C.J., SPALDING, WILLIAMS, WHITTEMORE, & CUTTER, JJ.

Labor. Jurisdiction, Federal question, Labor. Equity Pleading and Practice, Master: confirmation of report, recommittal; Decree. *Evidence,* Of agency. *Supreme Judicial Court,* Briefs.

Suit in equity heard in the Superior Court by *Warner, J.*, upon a demurrer and by *Thompson, J.*, upon a motion to dismiss and a master's report.

WILKINS, C.J. The plaintiffs, who are members of the United Steelworkers of America, AFL–CIO, and its Local 5158, both individually and on behalf of all the members, bring this bill in equity to enforce a collective bargaining agreement with the defendant. The defendant filed a demurrer to the bill and a "motion to dismiss" for want of jurisdiction, and appealed from interlocutory decrees overruling the demurrer and denying the motion to dismiss. The case was referred to a master. The defendant raises questions relating to the master, the hearings before him, and his reports. The final decree declared the agreement to be valid, and ordered the payment of specific amounts to members of the class for whom the suit was brought. The defendant appealed.

1. The defendant urges that "this action is within the purview of § 301 (a) of the Labor Management Relations

Act of 1947[1] (commonly referred to as the Taft-Hartley Act), 61 Stat. 156, 29 U. S. C. (1952) § 185, and that Congress in enacting said § 301 evidenced an intention to occupy the field of litigation involving violations of collective bargaining agreements when interstate commerce would be affected thereby." We do not accept the contention that State courts are without jurisdiction. The statute does not so declare. The conferring of jurisdiction in actions at law upon the appropriate District Courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction both at law and in equity in State courts. The case principally relied upon by the defendant, *Textile Wkrs. Union of America* v. *Lincoln Mills*, 353 U. S. 448, does not so state. In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction has been made exclusive, we shall not make what would be tantamount to an abdication of the hitherto undoubted jurisdiction of our own courts. Our decision in *Kerce* v. *Luther Mfg. Co.* 338 Mass. 312, 317, has gone far to adumbrate the position now taken, namely that there is concurrent jurisdiction in Federal and State courts over suits for enforcement of a collective bargaining agreement. Other State court decisions are in accord. *McCarroll* v. *Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 57–60, cert. den. sub. nom. *Los Angeles County Dist. Council of Carpenters* v. *McCarroll*, 355 U. S. 932. *Coleman Co. Inc.* v. *International Union, United Auto. Aircraft & Agricultural Implement Wkrs. of America (UAW–CIO)*, 181 Kans. 969, 972–974. *Steinberg* v. *Mendel Rosenzweig Fine Furs, Inc.* 9 Misc. 2d (N. Y.) 611. *Anchor Motor Freight N. Y. Corp.* v. *Local Union No. 445 of the Intl. Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America*, 171 N. Y. S. 2d 506, 509. *General Elec. Co.* v. *International Union United Auto. Aircraft & Agricultural Implement*

[1] "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act [chapter] . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Wkrs. of America, 93 Ohio App. 139, 153–156, app. dism. 158 Ohio St. 555. *Springer* v. *Powder Power Tool Corp.* Ore. , .[1] *General Bldg. Contractors' Assn.* v. *Local Union No. 542*, 370 Pa. 73, 79–80. *Philadelphia Marine Trade Assn.* v. *International Longshoremen's Assn., Local Union No. 1291*, 382 Pa. 326, 332–333.

The defendant's "motion to dismiss" for want of jurisdiction was rightly denied. No other ground of demurrer has been argued. The demurrer was rightly overruled.

2. On October 3, 1957, the case was referred to a master under the usual rule "to hear the parties, find the facts and report his findings to the court, together with such questions of law, arising in the course of his duty, as any party may request." Rule 86 of the Superior Court (1954).

The master's report was filed on December 27, 1957. On January 22, 1958, the plaintiffs filed a motion that the court "enter a decree in accordance with the findings, rulings and decision of the master's reports [*sic*] filed in the above matter." On May 15, 1958, this was allowed by indorsement on the motion, and on May 22 an interlocutory decree was entered also allowing the motion. From this decree the defendant appealed. On June 19 the plaintiffs' motion "for assessment of damages" was allowed in an interlocutory decree, which also referred the suit to the same master "for the assessment of damages only." From this decree the defendant also appealed. On January 22, 1960, a "master's supplemental report" was filed. A motion to confirm the supplemental report was allowed on February 18, 1960. The final decree was entered on February 23, and the defendant appealed.

The allowance of the motion for a decree in accordance with the report was irregular. The report first should have been expressly confirmed. "The findings of the master are entitled to no weight whatever until established by confirmation." *Peteros* v. *Peteros*, 328 Mass. 416, 421, and cases cited. The defendant argues that the allowance of

[1] 348 Pac. 2d 1112, 1113–1114.

the motion was an implied confirmation of the report, and we agree. It does not follow, however, as the defendant also contends, that the judge was without power to recommit the report to the master for the finding of further facts, to wit, as to damages. The expression of the motion in the terms of the assessment of damages was, at most, a formal defect which did not destroy the substance of the judge's action in allowing it. In *Cutter* v. *Arlington Casket Co.* 255 Mass. 52, 57, it was said, "Upon the coming in of a master's report the court in its discretion may overrule the exceptions thereto, confirm that report and recommit the case to the master for further report without request of the parties, if the nature of the matter under consideration requires further investigation and finding of further facts not inconsistent with the confirmed report; for example, the statement of an account between persons found by the report to be partners or to stand in a fiduciary relation to each other." The case at bar presents a similar situation. A like practice was followed in *Flynn* v. *Curtis & Pope Lumber Co.* 245 Mass. 291, 293. In the case at bar the judge's action was in the interest of avoiding delay in the termination of the controversy, and is to be looked upon with favor. See *Eastern Bridge & Structural Co.* v. *Worcester Auditorium Co.* 216 Mass. 426, 431.

3. The defendant argues that the master exceeded the scope of his authority in that the bill alleged that there was a written contract and the master found that there was an oral one. We are of opinion that this contention is not sustained by the record, and we shall not unduly prolong this opinion by refuting it in detail.

The defendant argues that there was error in the implied denial of four requests submitted to the master. We disagree. Requests numbered 3 and 21, which in substance seem to be founded upon the theory that the agreement proved was oral, could not have been given. Request numbered 1, to the effect that the scope of the master's report and his findings were limited by the pleadings, and request numbered 2, to the effect that the bill seeks the enforcement

of a written agreement, have been given adequate effect in the entry of the final decree and in this opinion. The decree established the facts found by the master as facts in the case. It was the duty of the trial judge and is the duty of this court on appeal from the final decree to see that the final decree is such as the law requires upon the facts found by the master and the proper inferences therefrom. *Foot* v. *Bauman*, 333 Mass. 214, 219, and cases cited.

4. The master did not err in the challenged rulings on evidence. As the defendant's argument is scarcely more than a suggestion of error, our discussion will be nearly as brief. In so far as one Andonian, "representative of United," was asked on the witness stand as to his own authority this was admissible. *DuBois* v. *Powdrell*, 271 Mass. 394, 397, and cases cited. In so far as he was asked what had been said during the negotiations by one Ellis, labor relations consultant for the defendant, as to the authority of the defendant's committee, there was independent evidence of the committee's authority. *Id.* Restatement: Agency (2d) § 285. Also, as there was no specific objection, the evidence was admissible to show for whom the members purported to act. *Wilson* v. *Davison*, 242 Mass. 237, 242. *Friend Lumber Co. Inc.* v. *Armstrong Bldg. Finish Co.* 276 Mass. 361, 367–368. *Commonwealth* v. *Connolly*, 308 Mass. 481, 492–493. Requests numbered 6, 7, 8, and 9 presented to the master are not shown to have been erroneously denied.

5. The record contains 113 printed pages. Neither brief is a compliance with Rule 15 of the Rules for the Regulation of Practice before the Full Court (1952) as amended, 337 Mass. 818–819, which requires reference by pages to the record in stating alleged facts and previous proceedings. Had appropriate motions been made, we might have struck the briefs from the files. See *Marshall* v. *Crane*, 339 Mass. 780.[1] In a suitable case we stand ready to take such action of our own motion.

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[1] Mass. Adv. Sh. (1959) 1619.

6. Let the following entries be made: Interlocutory decrees affirmed. Final decree affirmed with costs of appeal.

So ordered.

James A. Crotty, George H. Mason, & John P. Dunn, for the defendant, submitted a brief.

Warren H. Pyle, for the plaintiffs.

Appendix B.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER: ss

SUPERIOR COURT
IN EQUITY
Number: 122913

JOHN F. COURTNEY, ET ALS
v.
CHARLES DOWD BOX CO., INC.

FINAL DECREE AFTER RESCRIPT

This cause came on to be further heard after rescript from the Supreme Judicial Court and was argued by counsel; thereupon, upon consideration thereof, it is ORDERED, ADJUDGED AND DECREED that:

1—The Contract between Charles Dowd Box Co., Inc. and the United Steelworkers of America, AFL-CIO, Exhibit 8 attached to the Master's Report herein, is valid and binding on the parties thereto.

2—The Defendant is indebted to the members of the class on whose behalf the named Complainants brought suit as is set forth below, together with interest from and after April 11, 1958 in the amounts set forth below, together with costs in the amount of $73.30.

3—The Defendant is ordered to pay forthwith the amounts set forth below to the members of the class named below.

Name	Principal	Interest to 12/5/1960	Total
Clifford G. Allard	$282.31	$44.92	$327.23
John P. Anderson	366.67	58.34	425.01
Julian T. Antanavica	82.49	13.12	95.61
George G. A. Asplund	377.07	59.99	437.06
Pedro Augusto	387.79	61.70	449.49

Name	Principal	Interest to 12/5/1960	Total
Edwin B. Gannister	$333.44	$53.05	$386.49
James A. Barr	350.19	55.72	405.91
Wilfred J. Benoit	286.30	45.55	331.85
Charles E. Blouin	178.93	28.47	207.40
Lehman L. Bolivar	310.64	49.42	360.06
Charles N. Bosley	174.36	27.74	202.10
Richard Boudreau	311.22	49.52	360.74
Francis R. Brailey	134.10	21.34	155.44
Raymond J. Brewer	367.88	58.53	426.41
Edwin C. Briggs	297.45	47.32	344.77
Charles L. Brown	381.02	60.62	441.64
Stanley J. Burdzel	251.55	40.02	291.57
Lewis R. Burnett	363.11	57.77	420.88
Joseph D. Carpinetti	102.33	16.28	118.61
Alfred Carrier	414.47	65.94	480.41
Frank Ceredona	350.04	55.69	405.73
Adelard Chamberland	343.70	54.68	398.38
Stephen V. Chiras	397.58	63.25	460.83
Margaret Ciccolini	332.69	52.93	385.62
Raymond E. Clark	342.57	54.50	397.07
Mihail Cocavessis	373.06	59.35	432.41
Earl E. Cofsky	367.02	58.39	425.41
Harvey J. Cofske	243.02	38.66	281.68
John W. Cofsky	365.72	58.19	423.91
Walter E. Cofsky	356.42	56.71	413.13
Hector O. Courtemanche	186.81	29.72	216.53
John F. Courtney	311.30	49.53	360.83
Lester G. Cuddeback	573.26	91.21	664.47
Dimitri J. Dallas	74.64	11.88	86.52
William E. Davis	329.76	52.46	382.22
Michael J. Demoga	35.13	5.59	40.72
Richard H. Desrosiers	452.39	71.98	524.37

Name	Principal	Interest to 12/5/1960	Total
Salvatore P. Distefano	$518.25	$82.45	$600.70
Thomas G. Donnelly	17.70	2.82	20.52
Richard Drake	114.24	18.18	132.42
Richard W. Dumphy	519.56	82.66	602.22
Donald D. Elliot	89.33	14.21	103.54
Mary E. Emond	299.36	47.63	346.99
Roy Faneuff	341.82	54.38	396.20
Raymond C. Faubert	610.04	97.06	707.10
William Fitzgerald	355.72	56.60	412.32
Mary J. Foley	279.06	44.40	323.46
Joseph P. L. Gagne	316.70	50.39	367.09
Alfred Gagnon	350.23	55.72	405.95
Armand Gagnon	408.79	65.04	473.83
Edward F. Gilfoy	373.70	59.46	433.16
Louis Giorgio	13.28	2.11	15.39
Anthony Gircys	367.35	58.45	425.80
Donald B. Gullbrand	131.90	20.99	152.89
Evert J. Gustafson	281.11	44.72	325.83
Stanley Gustafson	402.17	63.99	466.16
William D. Hackett	116.35	18.51	134.86
James Harkins	371.87	59.16	431.03
Francis A. Hazzard	341.09	54.27	395.36
Robert Hearnlaye	183.99	29.27	213.26
Richard M. Heath	413.99	65.87	479.86
George E. Houle	386.40	61.48	447.88
William Hoye	431.21	68.61	499.82
Gordon E. Huckins	381.59	60.71	442.30
Joseph G. Ignasiak	514.11	81.79	595.90
Joseph R. Jacques	352.98	56.16	409.14
Walter E. Johnson	182.75	29.08	211.83
John Kavorkian	401.41	63.86	465.27
Charles DerKazarian	461.97	73.50	535.47

Name	Principal	Interest to 12/5/1960	Total
Richard I. Kemp	$398.70	$63.43	$462.13
Chester F. Krakowski	149.09	23.72	172.81
John D. Krafve	132.87	21.14	154.01
Jonas Krisiulevicius	439.54	69.93	509.47
John Z. Kuderian	425.76	67.74	493.50
Lucian Laferriere	324.16	51.57	375.73
Clifford A. Lamere	421.72	67.10	488.82
William E. Lamonda	406.44	64.66	471.10
Carl H. Landin, Jr.	344.17	54.76	398.93
Henry L. Landry	301.53	47.97	349.50
Leon J. Latino	138.56	22.04	160.60
Calvin A. Lester	400.42	63.71	464.13
Clarence E. Lusignan	229.68	36.54	266.22
Joseph H. Marcotte	346.56	55.14	401.70
Raymond R. Martin	220.16	35.03	255.19
Lawrence G. McCarl	563.13	89.59	652.72
Eugene A. McClure	324.64	51.65	376.29
Thomas W. McLaughlin	276.07	43.92	319.99
Arthur H. McLean	472.24	75.13	547.37
John V. Miller	550.15	87.53	637.68
Arthur G. Monast	402.77	64.08	466.85
Raymond A. Mondville	465.64	74.07	539.61
Jack Mosley	356.53	56.72	413.25
Francis G. Mousseau	344.04	54.74	398.78
Robert D. Mullaney	432.39	68.79	501.18
Ronald M. Narva	416.24	66.22	482.46
Frederick C. Nist	429.31	68.30	497.61
Carl K. Orne	340.97	54.25	395.22
Johnson R. Paige	490.04	77.97	568.01
Robert A. Patterson	327.74	52.14	379.88
Einar R. Pearson	111.74	17.78	129.52
Paul P. Pederson	586.47	93.31	679.78

Name	Principal	Interest to 12/5/1960	Total
Omer A. Perron	$336.48	$53.53	$390.01
Walter A. Petkiewicz	253.40	40.32	293.72
James P. Pignataro	390.96	62.20	453.16
Frederick J. Pilat	319.21	50.79	370.00
Theodore J. Plotczyk	404.62	64.38	469.00
Robert P. Prendiville	305.05	48.53	353.58
Armand Prunier	191.62	30.49	222.11
Stephen C. Publicover	434.32	69.10	503.42
Donald A. Rackauskas	424.90	67.60	492.50
Anthony Raudonis	375.15	59.69	434.84
Richard Raskett	183.88	29.26	213.14
Donald L. Raymond	467.39	74.36	541.75
Glenn A. Rich	474.25	75.45	549.70
Alfred G. Richard	369.13	58.73	427.86
Robert J. Richard	363.10	57.77	420.87
Roy M. Richardson	340.45	54.17	394.62
Robert W. Ritchie	275.31	43.80	319.11
Albert Roy	323.45	51.46	374.91
Camille G. Roy	341.48	54.33	395.81
Fernand R. Roy	377.12	60.00	437.12
Kenneth C. Robbins	454.72	72.35	527.07
Richard W. Robbins	20.13	3.20	23.33
John R. Ruggieri	384.50	61.17	445.67
John Rzeznikiewicz	328.97	52.34	381.31
Robert A. Santomenno	433.52	68.97	502.49
Arthur Senecal	420.58	66.91	487.49
Irene D. Sheard	299.53	47.66	347.19
John P. Shutts	456.60	72.65	529.25
Joseph J. Sliva	448.84	71.41	520.25
John T. Small	424.43	67.53	491.96
Allen G. Spangenberg	398.02	63.32	461.34
Paul Spiewak	84.59	13.46	98.05

Name	Principal	Interest to 12/5/1960	Total
Harold L. Spinney	$407.98	$64.91	$472.89
Robert C. Spring	457.60	72.80	530.40
Pauline M. Stumpf	291.63	46.40	338.03
Joseph A. Sutter	501.48	79.79	581.27
Richard G. Sweares	480.92	76.51	557.43
Arthur E. Taylor	170.76	27.17	197.93
Leon A. Tebo	493.86	78.57	572.43
Napoleon C. Tetreault	405.61	64.53	470.14
Andres F. Tripaldi	580.77	92.40	673.17
Beverly Van Patten	248.08	39.47	287.55
Theodore R. Wilkins	303.40	48.27	351.67
Reino I. Williamson	349.91	55.67	405.58
Willis M. Woodman	468.45	74.59	543.04
John P. Zalieckas	553.49	88.06	641.55
Joseph A. Zalieckas	485.69	77.27	562.96
Edward J. Zylinski	405.69	64.55	470.24
Clifford T. Hartman	372.71	59.30	432.01
Ralph A. Thulin	343.08	54.58	397.66

4—The clerk shall issue a writ of execution upon this Decree.

By the Court (Pecce, J.)

Entered December 5, 1960 WILFRED B. FEIGA
The above Decree may be entered. Assistant Clerk

LE COPY

Office-Supreme Court, U.S.
FILED
FEB 7 1961
JAMES R. BROWNING, Clerk

No. 33

IN THE

Supreme Court of the United States

OCTOBER TERM [redacted] 1961

CHARLES DOWD BOX CO., INC.,

Petitioner,

v.

JOHN F. COURTNEY, et al, as they fairly represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 641

CHARLES DOWD BOX CO., INC.,

Petitioner,

v.

JOHN F. COURTNEY, et al, as they fairly represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF IN OPPOSITION

ADDITIONAL STATEMENT

The petition herein fails to say what this law suit is about. Its statement of the case therefore needs supplementation.

The petitioner is the Charles Dowd Box Co., Inc. It will be referred to hereinafter simply as the "Company." The respondents are the officers of Local 5158 of the United

Steelworkers of America and a representative of the International Union (hereinafter referred to simply as the "Union"). They brought suit in the Superior Court of Massachusetts as representatives of the membership of the Union and of the local. The suit arose from the following facts.

Following extended collective bargaining negotiations in the spring of 1957, the Union on May 20, 1957, reached agreement with the Company. (R. 45-46). The agreement set the terms and conditions of employment for the production and maintenance employees of the Company at its plant at Worcester, Massachusetts, who are organized in Local 5158. (R. 7-31). The agreement covered the period May 20, 1957-November 21, 1958. (R. 30). Among other changes, it provided for a wage increase of 13 cents per hour, one additional holiday, and changes in the method of computing vacation pay. (R. 6, 46).

The changes in the agreement terms were placed in effect shortly after May 21, 1957 and remained in effect through August, 1957. (R. 46). On September 4, 1957, the Company notified the employees that it would return to the conditions of employment in effect prior to May 21 and, acting in accordance with that decision, reduced wages by 13 cents per hour and deprived the employees of other improvements which the agreement of May 21 had provided. (R. 46).

This suit was then brought asking, *inter alia*, for damages for the claimed breach of contract. (R 1-5). The Company did not seek to remove the case to a Federal District Court but objected to the jurisdiction of the state court and was overruled. (R. 40, 77). On the merits it contended that the agreement of May 21 was invalid on the following grounds: (1) the Company's negotiating committee acted beyond its authority in negotiating it, (2) the Vice President who signed it for the Company had no authority to do so, and (3) it was not signed as required by the Union's officers until August, 1957. (R. 46-47).

The proceedings were concluded as set forth on pp. 4-5 of the petition and a final decree was entered awarding specific sums to named employees as the amount which would have been paid them by the Company if it had fully complied with the contract, plus interest. (R. 93, 103). The Company seeks certiorari on the question of state court jurisdiction.

ARGUMENT

The petition makes a number of assumptions as to the law with which we agree. It assumes, first, that despite *Westinghouse*[1] the present suit could have been brought in a federal court under Section 301 of the Labor-Management Relations Act of 1947, 29 U. S. C. §185. We agree, although this Court has not flatly so held.

The petition assumes, second, that in this suit the applicable substantive law is federal, citing *Textile Workers Union v. Lincoln Mills,* 353 U. S. 448 (1957). We agree.

The petition assumes, finally, that since this suit is cognizable under Section 301 it could have been removed by the Company to a federal district court, citing *Fay v. American Cystroscope Makers,* 98 F. Supp. 278 (S. D. N. Y. 1951). We agree, although the question has never been decided by this Court. *Ingraham* v. *Local 260 IUE,* 171 F. Supp. 103 (D. Conn. 1959) and *Minkoff* v. *Scranton Frocks, Inc.,* 172 F. Supp. 870 (S. D. N. Y. 1959) are to the same effect.

None of these propositions, however, require the conclusion that the Massachusetts court had no jurisdiction. Indeed, such an assertion is contrary to the federal decisions permitting removal: removal jurisdiction is derivative and the removed suit must fail if the court in which it was originally filed was without jurisdiction, even if the federal court would have had jurisdiction if the suit were originally

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[1] *Westinghouse Salaried Employees v. Westinghouse Corp.,* 348 U. S. 437 (1955).

brought there. *Lambert Run Coal Co., v. Baltimore & Ohio R. Co.*, 258 U. S. 377 (1922).

The question here involved has been decided a number of times. Some of the state court cases in which it has been decided are cited by the petitioner. Others are cited in the opinion of the Supreme Judicial Court of Massachusetts. See also *Ryan Aeronautical Co.* v. *UAW Local 509*, 179 F. Supp. 1 (S. D. Calif. 1959). All of these cases hold that the state courts are not ousted by the provisions of Section 301 from consideration of suits for breach of collective bargaining agreements involving industries affecting commerce. Only the uncertain dictum of one federal district judge in a case decided upon other grounds. *(International Plainfield Motor Co. v. Local 343,* 123 F. Supp, 683, 692 (D. N. J. 1954)) and the gratuitous footnote observation of the Third Circuit in the *Westinghouse* opinion (210 F. 2d 623, 629, n. 16) which was rejected by this Court have so far even intimated to the contrary.

There is no conflict of decisions and there is no reason why this Court should, at this time and in this case, reach out to decide the question presented by the petition.

Respectfully submitted,

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Supreme Court of the United States.

OCTOBER TERM, 1960.

No. 641.

CHARLES DOWD BOX CO., INC., *Petitioner,*

v.

JOHN F. COURTNEY ET ALS., AS THEY FAIRLY REPRESENT THE MEMBERSHIP OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 5158,* *Respondents.*

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR PETITIONER.

Citations to Opinion Below.

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts (R. 69) is reported in Massachusetts Advance Sheets (1960) at pages 1085-1090 and at 169 N.E. 2d 885.

Jurisdiction.

The decision of the Full Court of the Supreme Judicial Court of the Commonwealth of Massachusetts was rendered on November 7, 1960 (R. 69). The final decree of the Superior Court after rescript and in accordance with

*The names of the individual plaintiffs (now respondents in this Court) are set forth on page 1 of the record.

the opinion of the Supreme Judicial Court was entered on December 5, 1960 (R. 73). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. The applicable portion of section 1257 is as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . . . .
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

The petition for writ of certiorari was filed in this Court on January 9, 1961, and certiorari was granted by the Court on February 20, 1961 (R. 79).

Question Presented.

The question presented is whether Congress, in enacting the Labor Management Relations Act of 1947 (commonly referred to as the Taft-Hartley Act), 61 Stat. 136, 29 U.S.C. § 141, pre-empted to the exclusive jurisdiction of the federal courts that field of litigation involving violations of collective bargaining agreements when interstate commerce would be affected thereby in such a manner that

the lower court in this action was without jurisdiction to hear or determine this action.

Statute Involved.

The statutory provision involved is section 301 (a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. § 185, p. 180. Section 301 (a) reads as follows:

> "(a) Suits for violation of contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Other pertinent statutes are set forth at appropriate points in this brief.

Statement.

The respondents, members of the United Steelworkers of America, AFL-CIO, and its Local 5158, both individually and on behalf of all members of the United Steelworkers of America, AFL-CIO (hereinafter referred to as "United"), and on behalf of all members of said Local 5158 (hereinafter referred to as "Local"), brought a bill in equity (R. 1) in the Superior Court of the Commonwealth of Massachusetts to enforce an alleged collective bargaining agreement with the petitioner, "Exhibit C" (R. 7). The bill of complaint alleged a termination of said

agreement (R. 3) and contained prayers for preliminary and permanent injunctions against termination of said agreement by the petitioner (R. 5), specific performance (R. 5), and damages for a purported termination of the alleged collective bargaining agreement (R. 5).

The defendant (petitioner here) filed a demurrer and answer to the bill of complaint (R. 40), the demurrer raising the federal question set forth above (R. 41). The demurrer of the defendant was overruled (R. 43-44) and the defendant appealed (R. 44) to the Supreme Judicial Court for the Commonwealth of Massachusetts. The case was referred by the Superior Court to a master, who held hearings on the merits of the case and filed his report (R. 45).

The master found in his report that all of the plaintiffs, with the exception of Roy Stevens, were officers of Local 5158 of the United Steelworkers of America, AFL-CIO, and that Roy Stevens was an International Representative of United (R. 45); that the defendant manufactured corrugated containers sold in interstate commerce and that the defendant purchased substantial quantities of supplies in interstate commerce (R. 45); that the Local was first certified as the bargaining agent of the Company's employees in 1954, and the first collective bargaining agreement between the Union and the Company was executed in June of 1955 to run through May 18, 1957 (R. 45); that in the early months of 1957 the Local negotiated with the Company negotiating committee for the establishment of a new collective bargaining agreement (R. 45); that on May 21, 1957, oral agreement was reached as to the basic items of the new collective bargaining agreement and a stipulation (R. 6 and "Exhibit A" attached to the bill of complaint) was signed (R. 45); that on May 28 the language of the alleged new agreement was agreed upon by the Company and the Union in Boston (R. 46); that on

August 2, 1957, David Dowd signed the copies of the purported new collective bargaining agreement (R. 7 and "Exhibit C" attached to the bill of complaint and Exhibit 8 attached to the master's report) and delivered the same to Andonian, allegedly a Union official (R. 46); that on August 12, 1957, Courtney, the President of the Local, was informed that David Dowd had no longer anything to do with labor relations for the Company (R. 46); that thereafter on the same day officers of the Local and Andonian signed the new collective bargaining agreement (R. 46); and thereafter the agreement was sent to Boston and Pittsburgh (R. 46) for signatures of the officers of United (R. 46); that the signatures of the officers of United were affixed between August 13 and September 12, 1957 (see paragraph 21, appearing at R. 54); that the defendant initiated changes in accordance with the purported collective bargaining agreement until the latter part of August, 1957 (R. 46), and on September 4, 1957, the defendant notified its employees (R. 39 and "Exhibit D" attached to bill of complaint) that it would terminate said changes (R. 46); that Andonian and Courtney, as officers of United and the Local, were notified of David Dowd's lack of authority prior to the execution of the agreement by United (R. 46-47); and that Exhibit 8 ("Exhibit C" to Bill of Complaint) constituted a collective bargaining agreement between the parties (R. 54, paragraph 24).

The Company contended that its negotiating committee acted beyond its authority if it in fact agreed to the changes contained in "Exhibit C" attached to the bill of complaint (R. 46); that David Dowd had no authority to execute and deliver the purported new collective bargaining agreement (R. 46); and that no valid agreement between the Company and the Union was entered into prior to the Company's notification to United and the Local that the purported agreement was unsatisfactory to the Company.

The petitioner filed objections to the report of the master and filed a motion to dismiss for want of jurisdiction, again raising the federal question set forth above (R. 56). The motion to dismiss for want of jurisdiction was denied (R. 56). After other proceedings, not here material, in the Superior Court, a final decree was entered in the Superior Court adverse to the petitioner (R. 58). From this final decree, from the adverse rulings and decrees of the Superior Court on the federal questions involved and from other interlocutory decrees, not here material, the petitioner appealed to the Supreme Judicial Court for the Commonwealth of Massachusetts. The Supreme Judicial Court rendered its opinion (R. 69) on November 7, 1960, a rescript (R. 68), was received by the Superior Court, and a final decree after rescript (R. 73) was entered in the said Superior Court for Worcester County. The opinion of the Supreme Judicial Court was adverse to the petitioner's contention that the Labor-Management Relations Act precluded the exercise by the Massachusetts courts of jurisdiction over the subject matter of the action commenced by the respondents.

Summary of Argument.

I. The lower court action fell within the boundaries of section 301 since more than uniquely personal rights were sought to be enforced by the plaintiffs therein.

II. Congress in enacting section 301 of the Labor Management Relations Act pre-empted to the federal courts suits involving violations of collective bargaining agreements between parties engaged in an industry affecting interstate commerce. The Massachusetts courts were therefore without jurisdiction to hear or determine the subject matter of the action commenced in the Worcester Superior Court.

III. The conduct of the petitioner, complained of by the plaintiffs in the lower court action, if established to be true, constituted an unfair labor practice. This Court in prior decisions has held that state courts cannot in these circumstances exercise jurisdiction. For this reason alone the lower court judgment must be reversed.

Argument.

I.

The Lower Court Suit was Within the Purview of Section 301.

The master expressly found in his report (R. 45) that the petitioner sold containers in interstate commerce and purchased substantial supplies in interstate commerce. In addition, the master found in his specific finding No. 23 (R. 54):

> "I find that Company sells a substantial part of its products and buys a substantial part of its supplies in interstate commerce."

Thus there can be no question raised that the petitioner and its employees were not engaged in an industry affecting interstate commerce within the meaning of section 301.

In addition, the lower court suit was a class action wherein the plaintiffs were allegedly fairly representative of the Local and United. The named plaintiffs in the lower court action were the vehicle for maintaining United's right of action, for United was allegedly the party contracting with the defendant (R. 7, 47). The plaintiffs in the state court action sought specific performance of each provision of the purported collective bargaining agreement, injunctions in aid of enforcement, and

damages for termination of the agreement (R. 4, 5). The bill of complaint states in detail (R. 3, 4) those items contained in "Exhibit C" (R. 7) which the plaintiffs sought specifically to enforce. If this list of items and the provisions of "Exhibit C" are examined, it is evident that more than uniquely personal rights of the employees of the petitioner were the subject matter of the suit, and that United and the Local had interests in many provisions of that document, such as Article I (R. 7, 8), providing for the recognition of the union, and Article XX, providing for union shop and check-off (R. 24-25). These were of vital concern to United and the Local. This is not a case such as *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, which was a suit by the Union on behalf of 4000 employees to recover merely a day's pay for each. Indeed, the vitality of *Westinghouse* has been questioned in many quarters in view of the opinion of this Court in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448. See, for example, 37 N.C.L. Rev. 500, 504-505 (May, 1961), and see also *A. L. Kornman Co.* v. *Amalgamated Clothing Workers*, 264 F. 2d 733 (6th Cir. 1959), in which enforcement of an arbitration award was granted.

The fact that specific performance is sought does not take this suit out of the section 301 area.

Textile Workers Union of America v. *Lincoln Mills of Alabama*, 353 U.S. 448.

In *Lincoln Mills* only specific performance of an agreement to arbitrate was sought. The suit by the respondents here in the lower court sought specific performance of all of the provisions in the purported collective bargaining agreement, and accordingly is a stronger case under section 301 than was *Lincoln Mills*.

It should be noted that the respondents agree that the cause of action appropriately falls within section 301 (see Brief of Respondents in Opposition to Petition to Writ of Certiorari, at page 3). The fact that through lapse of time and crowded court dockets specific performance and injunction remedies became inappropriate and the final decree awarded only monetary damages does not change the gravamen of the bill as originally filed or compel a holding by this Court that the action could not have been brought under section 301.

II.

The Legislative History of Section 301 Warrants a Holding by This Court that Federal Courts have Exclusive Jurisdiction over All Cases Meeting the Requirements of Section 301.

At the outset it must be fairly admitted that, as stated by this Court in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448, 452—

> "The legislative history of § 301 is somewhat cloudy and confusing."

However, this fact is not surprising in view of the differences of opinion of the majority and minority factions with respect to the merits of the section as it was proposed. The opponents of section 301 raised primarily questions concerning the probable conflict of the United States District Courts under section 301 with the National Labor Relations Board proceedings under sections 7 and 8 of the Labor Management Relations Act of 1947, the lack of need of section 301, and the constitutionality of section 301.

S. Min. R. No. 105, 80th Cong., First Sess. pp. 13-14.

The proponents of the section, anxious, no doubt, to have the Act passed, concerned themselves primarily with the lack of uniformity of state laws concerning suits for violations of collective bargaining agreements and lack of any remedies of any sort in some states due to procedural difficulties. The majority did not reach out to anticipate, or in express terms deal with, the federal question here presented.

S. R. No. 105, 80th Cong., First Sess., pp. 15-18.

The lack of explicit language on the federal question here presented should not, of itself, however, deter this Court in finding that all actions meeting the requirements of section 301 have been pre-empted to the federal courts.

> "The statutory implications concerning what has been taken from the States and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation." *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 619.

> "This penumbral area can be rendered progressively clear only by the course of litigation." *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 480-481.

> "During the period in which preemption law respecting labor-management relations was in the main developed, it could not accurately be said that Congress had considered and contemplated the exclusion of state authority in the various situations that gave rise to the decisions which are now controlling. Cer-

tainly the statutory language itself was imprecise in this respect. To talk in terms of congressional intent in justifying these decisions is to use a shop-worn term in its loosest sense. But this is not to say that the decisions are incorrect or unsupportable. The necessary implications of congressional legislation often carry far beyond the limits of express congressional consideration, and to deny such implications may well be to cripple the effectiveness of the legislation. This is all the more true with respect to a comprehensive regulatory enactment relating to so dynamic a field as labor-management relations. Part of the genius of this kind of legislation, if drafted with insight and intelligence, is its capacity for overcoming, simply by its own momentum, unforeseen obstacles in its operation." Boundaries of State-Federal Jurisdiction, 13 N.Y.U. Conf. L. 51, 72-73.

While Congress evidently did not give specific consideration to the federal question here presented prior to the enactment of section 301, it cannot rightly be disputed that the entire legislative history of section 301 indicates a desire on the part of Congress to have the parties to a collective bargaining agreement be bound by that agreement and to create a remedy to enforce obligations under that agreement. As pointed out above, Congress was aware of the lack of uniformity in state laws and desired to afford a uniform remedy available to all parties, regardless of state affiliations, against violations of collective bargaining agreements.

See H. R. Rep. No. 245, 80th Cong., First Sess., pp. 45-46.

The provision for a cause of action and remedy under section 301 was a part of the overall program of Congress in

formulating a comprehensive federal scheme governing labor relations. In commenting upon the alleged unconstitutionality of section 301, Senator Taft said:

> "I don't see why suits regarding such collective bargaining contracts, when made, are not properly the subject of Federal law arising under the laws of the United States, therefore subject properly to the jurisdiction of the Federal Courts. I don't understand how we can cover the whole subject, if we do, in Federal laws, and then say, when you come down to suing about it, that the Federal Court has no jurisdiction." Hearings before Committee on Labor and Public Welfare on S55 and SJ Res. 22, 80th Cong., First Sess., p. 57.

The question, then, is how can the overall intention of Congress as expressed in section 301 and its legislative history be best served? This Court has often held, in areas within the province of the National Labor Relations Board, that state jurisdiction must yield to the federal law.

> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically di-

rected toward the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244.

"As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action." *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 480.

It is submitted that the foregoing language used by this Court with reference to areas over which the National Labor Relations Board has jurisdiction is equally applicable when it comes to a party seeking enforcement of a violation of a collective bargaining agreement. If creation of a federal body of law and uniformity of remedy was the intention of Congress, as it was, this intention can best be carried out if federal courts have exclusive jurisdiction of actions meeting the requirements of section 301. The alternative is the probability of conflict among decisions of federal courts and fifty state courts in cases involving violations of collective bargaining agreements in industries affecting commerce, even though those courts may purport to apply federal law (*Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448). This potential area of conflict is not to be lightly disregarded.

"A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of sub-

stantive law . . ." *Garner* v. *Teamsters Union*, 346 U.S. 485, 490-491.

"At a time when increasing erosion of state power has even given old friends of federalism cause for alarm, it is difficult to argue for a greater extension of federal power. However, in the area of labor relations extended federal power seems only appropriate. The competence of the states in the collective bargaining process has lagged tremendously behind that of the United States Government. The choice between applying federal law or state law in the newly empowered state courts and agencies is a choice between a highly sophisticated body of federal law and, in many states, a few antiquated precepts." 6 Villanova L. Rev. 80, 88.

See also Cox & Seidman, Federalism in Labor Relations, 64 H.L.R. 211, at 230, wherein it is stated:

"Where the Federal Government has enacted what was intended to be a comprehensive program for dealing with such problems, it should be encouraged to retain the responsibility and the states should be excluded from the entire area except where Congress has explicitly authorized them to intervene."

That section 301 does not come within the jurisdiction of a special administrative board such as the National Labor Relations Board should not determine that concurrent state jurisdiction is available in section 301 cases if the overall purpose of Congress would be frustrated. Congress considered that enforcement of collective bargaining agreements was of equal importance with the processes

which the parties go through to consummate such agreements.

> "If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.
>
> "Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce." S. R. No. 105, 80th Cong., First Sess., p. 16.

This Court has already decided the difficult question as to whether or not section 301 was merely a procedural statute or whether by enacting section 301 Congress intended to create a substantive body of law and thus create a remedy. This Court in the *Lincoln Mills* case resolved that conflict once and for all and held that substantive rights were created by the enactment of section 301 and that federal courts shall fashion a federal body of law.

> "Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor

organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.

. . . . . .

"The question then is, what is the substantive law to be applied in suits under § 301 (a)? We conclude that the substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws. . . . Federal interpretation of the federal law will govern, not state law. Cf. *Jerome* v. *United States,* 318 U. S. 101, 104.

. . . . . .

"It is not uncommon for *federal courts to fashion federal* law where *federal rights* are concerned. . . . Congress has indicated by § 301 (a) the purpose to follow that course here. . . . The power of Congress to regulate these labor-management controversies under the Commerce Clause is plain. . . . A case or controversy arising under § 301 (a) is, therefore, one within the purview of judicial power as defined in Article III." (Emphasis supplied.) *Textile Workers Union of America* v. *Lincoln Mills of Alabama,* 353 U.S. 448, 455-457.

If the foregoing quoted portion is read with emphasis as supplied above, this Court has already gone a long way toward establishing pre-emption in the areas of litigation encompassed by section 301. Once the establishment of a federal body of law has been decided as it was in *Lincoln Mills,* it would seem logically to follow that it should be the *federal* courts which develop that federal law and ap-

ply the same. A concurrent state remedy would only muddy the waters and serve no useful purpose.

In *Foy* v. *American Cystoscope Makers*, 98 F. Supp. 278, 280-281, which involved a motion to remand to the state court, after a breach of contract suit by the Union had been removed by the Union to the federal District Court, the latter court said, in denying the motion:

> "To hold otherwise would vest the plaintiff with power to withhold from a defendant the use of the forum which Congress has chosen to make available.
>
> "Such power in the plaintiff could only be justified if Section 185 left intact a separate and independent state cause of action for contract between unions and employers where the component of interstate commerce was present. If that were the fact, plaintiff might properly rely on the principal that he may elect to rely upon whichever law he desires . . . however, in the light of the determination that the Section creates a new, Federal, substantive right, . . . it seems clear that Congress pre-empted the field in this area.
>
> "The suggestion that the plaintiff should be permitted to compel defendant to litigate a federal claim in the State Court when Congress has explicitly made available a Federal forum is indefensible. Motion to remand is denied."

In *International Plainfield Motor Co.* v. *Local #343*, 123 F. Supp. 683, 692, the court held, in construing section 301:

> "Congress not only has created a substantive right in the exercise of its power under Article I, Section 8, cl. 3 of the Federal Constitution, the commerce clause, but it has also provided both the procedure for enforcing that right and the forum in which disputes

between the employer and the labor union should be heard . . .

"Since the Federal Court has been provided as the forum in which disputes of this nature are determined, *no other forum is available.*" (Emphasis supplied.)

See also *U.A.W.* v. *Buffalo Springfield Roller Co.*, 131 F. Supp. 667, 668.

In *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 210 F. 2d 623, 629-630, n. 16, the court indicated:

"There is no such choice of forums under Section 301, seemingly indicating that Congress intended to pre-empt to the Federal Courts litigation on collective bargaining contracts."

This last statement in the Third Circuit opinion in *Westinghouse* was not disputed nor in any way modified by Mr. Justice Frankfurter in announcing the decision of this Court when the *Westinghouse* case came before this Court and was reversed on other grounds. In addition, the Third Circuit opinion in *Westinghouse* was cited in the *Lincoln Mills* case, and again the foregoing statement, with reference to pre-emption, was not modified or disputed.

It has been suggested that it is safe to assume that the Federal Government has pre-empted the entire field of labor relations whenever the Labor Management Relations Act applies.

Brody, Federal Pre-emption Comes of Age in Labor Relations, 5 Lab. L. Journal, 743, 748.

Opposed to the foregoing decisions are some opinions of state courts which have been reluctant to hold that by the

enactment of section 301 they were precluded in appropriate cases from exercising jurisdiction.

McCarroll v. *Los Angeles County District Counsel of Carpenters*, 49 Cal. 2d 45, 57-60; cert. den. *sub nom. Los Angeles County Dist. Council of Carpenters* v. *McCarroll*, 355 U.S. 932.

Coleman Co., Inc., v. *International Union, United Auto, Aircraft and Agricultural Implement Workers of America*, 181 Kans. 969.

It is the petitioner's position that the interpretation placed on section 301 by such state courts is in conflict with the language contained in the *Lincoln Mills* opinion and does not foster the formation of the uniform body of federal law in this area which was contemplated by Congress and by this Court in the *Lincoln Mills* case. While a state court may naturally tend to resist limitations of its jurisdiction, if such an interpretation prevails, forum shopping will result, and the converse of the difficulties which surrounded the federal courts prior to *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, will inevitably occur.

This erroneous interpretation has already spawned anomalous results. In the case of *Swift & Co.* v. *United Packing House Workers of America*, 177 F. Supp. 511, a state court action was commenced by the employer and the Union removed the case to the federal District Court. On the employer's petition to remand the action to the state court it was held that, as to the prayer for an injunction, that portion of the case should be remanded. The District Court, however, did not remand that portion of the case in which the plaintiff sought damages, since section 301 specifically provided for original jurisdiction. The cause of action was thus split and the possibility of

conflicting decisions of two courts on the same factual situation was created. Surely Congress did not intend to create or give approval to forum shopping.

A decision of this Court holding that section 301 type cases must be brought exclusively in federal District Courts would not take all powers with respect to labor relations away from state courts nor would it create any hardships upon parties to collective bargaining agreement. No new "no-man's land" (if, indeed, this would constitute an obstacle) would be created. The effect on the parties would be merely that they would be required to litigate breaches of collective bargaining agreements in the federal District Courts when the agreements involved industries affecting interstate commerce. The effect, on the other hand, with respect to the intention of Congress would be substantial, for it would implement the admitted Congressional intention to promote federal regulation of labor relations in industries affecting commerce and it would eliminate the probability of conflicting state court decisions and interpretations with respect to a federal body of law. There would still be left to a state court the right to assume jurisdiction—

(1) to properly exercise its police powers where acts of violence occur;

United Automobile Workers v. *Russell*, 356 U.S. 634;

United Construction Workers v. *Laburnum Construction Corp.*, 347 U.S. 656;

(2) where the gravamen of the action is merely peripheral to the Labor Management Relations Act;

International Association of Machinists v. *Gonzales*, 356 U.S. 617;

(3) where the National Labor Relations Act permits state action—for example, under sections 10(a) and 14(b).*

(4) where suits for damages are based on unlawful boycotts and brought under section 303 (b) of the Labor Management Relations Act.*

(5) where the suits involve violations of collective bargaining agreements in an industry not affecting interstate commerce.

The overall policy of Congress as expressed in section 301 and in its legislative history indicates that District Courts should have exclusive jurisdiction over lawsuits meeting the requirements of section 301. As no compelling reason dictates to the contrary, this Court should so hold.

III.

Previous Decisions of This Court Compel the Conclusion that the Lower Court had No Jurisdiction over the Subject Matter of the Bill of Complaint.

Whether or not this Court decides that all suits for violations of collective bargaining agreements between parties in industries engaged in interstate commerce must be brought in federal courts, the Massachusetts courts had no jurisdiction in this case.

The bill of complaint filed by the respondent in the Worcester Superior Court (R. 1) alleged in effect the unlawful termination by the petitioner of the purported collective bargaining agreement. The respondents sought in that bill of complaint, in prayers "a)" and "b)" (R. 5), restraining orders and injunctions against such termina-

*See Appendix, p. 27.

tion, and, in prayer "f)" (R. 5), damages arising from the acts of the petitioner in terminating the existing collective bargaining agreement.

Section 8 (d) of the Labor Management Relations Act (29 U.S.C. § 158 (d)) provides:

"§ 158. Unfair labor practices.

. . . . . .

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later: . . ."

Section 8 (a) (5) of said Act (29 U.S.C. § 158 (a) (5)) provides that it shall be an unfair labor practice for an employer—

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

If the allegations of the bill of complaint are taken as true and are considered in the light of the above-quoted statutory provisions, the conduct of the petitioner in terminating the agreement without complying with section 8 (d) (1) through section 8 (d) (4) constituted an unfair labor practice. This being the case, state jurisdiction must yield to the federal system laid down by Congress for regulating unfair labor practices and in providing a substantive cause of action in section 301 for violations of collective bargaining agreements.

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are

protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244.

See also *Garner* v. *Teamsters Union*, 346 U.S. 485.
Guss v. *Utah Labor Relations Board*, 353 U.S. 1.

It is clear from the legislative history of section 301 that Congress intended to give to a party claiming a breach of a collective bargaining agreement in an industry affecting commerce a right of action concurrent and parallel to that party's right to go to the National Labor Relations Board with an unfair labor practice charge.

"The committee bill makes collective-bargaining contracts equally binding and enforceable on both parties. In the judgment of the committee, breaches of collective agreement have become so numerous that it is not sufficient to allow the parties to invoke the processes of the National Labor Relations Board when such breaches occur (as the bill proposes to do in title I). We feel that the aggrieved party should also have a

right of action in the Federal courts." S. R. No. 105, 80th Cong., First Sess., p. 15.

Consider also Senate Minority viewpoint on section 301, at the time it was contemplated, that all contract violations would constitute unfair labor practices under the Taft-Hartley Act.

> "Finally, sections 8 (a) (6) and 8 (b) (5) together with section 301 would give rise to a conflict of jurisdiction between the National Labor Relations Board and the United States district courts. This latter section permits suits in the United States district courts for violations of collective bargaining agreements. Parties to such agreements thus have the choice of bringing their action before the Board or the United States district courts." S. Min. R. No. 105, 80th Cong., First Sess., p. 13.

See also *Textile Workers Union* v. *Arista Mills Co.*, 193 F. 2d 529 (4th Cir.).
United Steel Workers of America v. *New Park Mining Co.*, 273 F. 2d 352, 358 (10th Cir.).

It thus becomes quite clear that contract violations which constitute unfair labor practices under section 8 of the National Labor Relations Act are subject to litigation only under section 301 of the Act, and that state courts are precluded from exercising jurisdiction over such violations.

> "We are satisfied that in the adoption of section 301, Congress has manifested its purpose to vest jurisdiction over collective bargaining agreements, to a certain extent, where commerce is affected, and unfair

§ 187. BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS; RIGHT TO SUE; JURISDICTION; LIMITATIONS; DAMAGES.

. . . . . .

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 33

CHARLES DOWD BOX CO., INC.,
Petitioner,

v.

JOHN F. COURTNEY et al, as They Fairly Represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,
Respondents.

BRIEF OF WISCONSIN EMPLOYMENT RELATIONS BOARD, AMICUS CURIAE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 33

CHARLES DOWD BOX CO., INC.,

Petitioner,

v.

JOHN F. COURTNEY et al, as They Fairly Represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,

Respondents.

BRIEF OF WISCONSIN EMPLOYMENT RELATIONS BOARD, AMICUS CURIAE

QUESTION PRESENTED

Did Congress intend, by authorizing suits in federal courts for violation of collective bargaining contracts, to deprive the parties of their traditional right to resort to state tribunals for relief?

POSITION OF WISCONSIN EMPLOYMENT RELATIONS BOARD, AMICUS CURIAE

The Wisconsin Employment Relations Board appears *amicus curiae* in this case because of the importance of the issue to the thousands of litigants who might have closed to them, if petitioner's contentions were adopted, the doors of state tribunals to which they have become accustomed to resort for convenient and effective relief for violation of their contract rights. It is important, too, to members of local communities who are not directly involved in such disputes, that there be kept available all possible facilities to resolve disagreements about contracts, so that the economic warfare which performance of contracts is designed to prevent may be avoided.

There are thousands of cases, reported and unreported, in which both parties to a contract desire that a local tribunal resolve a dispute about its meaning or application, and the tribunal's jurisdiction is not challenged. If, however, it should be held that Congress has preempted the enforcement of collective bargaining contracts so as to make the jurisdiction of federal courts exclusive, local tribunals would have to deny relief, no matter how desperately the adjudication might be desired by both parties to the dispute. If jurisdiction is lacking, it cannot be conferred by private parties.

The board respectfully represents that under sec. 301 of the Labor Management Relations Act, 1947, federal and state tribunals have concurrent jurisdiction over cases involving violation of collective bargaining contracts, for the following reasons:

ARGUMENT

I.

OUSTER OF STATES FROM THEIR TRADITIONAL AUTHORITY TO GRANT REMEDIES FOR CONTRACT VIOLATIONS CAN BE ACCOMPLISHED ONLY BY CLEAR MANIFESTATION OF CONGRESSIONAL INTENT

This cause deals with the question of jurisdiction to enforce collective bargaining contracts. Traditionally, enforcement of contracts has been a field governed exclusively by state law.

It is pointed out in *Restatement, Conflict of Laws*, p. 395, in the scope note to Chapter 8 on Contracts, that:

> "Whether a contract exists is a question of the contract law of some state."

This court adhered to that principle when it held in *Erie Railroad v. Tompkins*, (1938) 304 U.S. 64, 78, 82 L. ed. 1188, 58 S. Ct. 817, 114 A.L.R. 1487 that, except "in matters governed by the Federal Constitution or by Acts of Congress", there is no general federal law relating to contracts.

There is no provision of the United States Constitution authorizing Congress to regulate contracts as such. The Act of Congress here involved is not one purporting to deal with contracts generally, which would be outside the Constitutional delegation of Congressional powers, but one enacted under the power to regulate commerce, in a field "primarily of interest to the state" and "until recent times left entirely to state conrol."*

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*Bethlehem Steel Co. v. New York State Labor Rel. Bd., (1947) 330 U.S. 767, 772, 67 S. Ct. 1026, 91 L. ed. 1234.

It does not automatically follow that, because Congress has exercised power over commerce in the contract field, states are wholly excluded from their traditional function of resolving disputes over contracts made and to be performed within their borders. In the minds of many who would abolish our dual system of government, an enactment by Congress under its power to regulate commerce seems automatically to accomplish the same effect as a constitutional amendment to deprive states of all reserved jurisdiction in any related field. Such an effect should not be given to a Congressional enactment, at least unless "the subject matter is not so 'intimately blended and intertwined with responsibilities of the national government' that regulation of the subject matter itself raises an 'inference of exclusion.'"*

From the careful delimitations indicated by this court in the earlier cases in which it met the challenges to the power of Congress to regulate an intrastate enterprise because of its effect on commerce (see, for example, *National Labor Relations Bd. v. Jones & Laughlin S. Corp.*, (1937) 301 U.S. 1, 81 L. ed. 893, 57 S. Ct. 615 and *Consolidated Edison Co. v. National Labor Relations Bd.*, (1938) 305 U.S. 197, 83 L. ed. 126, 59 S. Ct. 206), it would have been difficult to predict the degree of state exclusion exemplified in *Guss v. Utah Labor Relations Board*, (1957) 353 U.S. 1, 77 S. Ct. 598, 1 L. ed. 2d 601.

The gamut between those extremes was covered only by 20 years of careful search for Congressional intent. In this case, it is sought to bridge the gap from "Congress may" to "states may not" in the few years elapsed since *Textile Workers Union v. Lincoln Mills of Ala.*, (1957) 353 U.S. 448, 1 L. ed. 2d 972, 77 S. Ct. 912.

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*Bethlehem Steel Co. v. New York State Labor Rel. Bd., (1947) 330 U.S. 767, 772, 67 S. Ct. 1026, 91 L. ed. 1234.

A number of authorities are quoted by the petitioner to the effect that the federal government "should" assume responsibility and exclude states (Petitioner's Brief, pp. 14-15). These are subjective opinions which should carry weight, if at all, only before a legislative tribunal.

This court has in every case held that the means of determining respective responsibilities of national and local governments is to ascertain Congressional intent, rather than to resort to the opinions of either laymen or experts as to what the law "should" be.

Congressional intent is to be obtained primarily from the words Congress used, from the legislative history, and from the purpose of the enactment.

II

THE WORDS USED BY CONGRESS DO NOT MANIFEST AN INTENT TO OUST STATES OF THEIR TRADITIONAL JURISDICTION TO ENFORCE CONTRACTS

The words out of which the court has heretofore read Congressional intent to preempt labor relations to the exclusion of states are primarily those contained in Sec. 10 (a) of the Labor Management Relations Act (61 Stat. 146, 29 U.S. C. § 160 (a)) under which the National Labor Relations Board is empowered to "prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce", and giving that board authority "to cede * * * jurisdiction" under certain circumstances. The authority to "cede" jurisdiction implies the correlative authority to withhold, and gives rise to the inference

that, in the absence of cession, the jurisdiction of the board is exclusive.

In Sec. 301 (a) of the act, (61 Stat. 156, 29 U.S. C. § 185) on the other hand, it is provided only that suits for certain contracts "may" be brought in federal courts, not that they *must* be. There is no provision, as so easily could have been supplied if Congress had so intended, that the jurisdiction of federal courts should be exclusive.

III

THE LEGISLATIVE HISTORY INDICATES THAT CONGRESS INTENDED THE REMEDY IN FEDERAL COURTS SHOULD BE IN ADDITION TO OTHER REMEDIES

The legislative history of sec. 301 of the Labor Management Relations Act, 1947, which authorizes suits in federal courts for violation of collective bargaining contracts, gives no indication of an intent to exclude the traditional jurisdiction of state courts over such suits.

A. Congress Rejected Provisions Which Would Have made Violation of Collective Bargaining Contracts an Unfair Practice

The Congress declined, as pointed out by this court in *Textile Workers v. Lincoln Mills,* (1957) 353 U.S. 448, 77 S. Ct. 912, 1 L. ed. 2d 972, to enact a provision which would have made it an unfair practice to violate the terms of a collective bargaining agreement, on the ground that enforcement of such a contract should be left to "the usual processes of the law."

House Conf. Report #510 on H.R. 3020, 80th Cong., 1st Sess.,

1 Legislative History of the Labor Management Relations Act 1947, 545-546, states:

"The Senate amendment contained a provision which does not appear in section 8 of existing law. This provision would have made it an unfair labor practice to violate the terms of a collective bargaining agreement or an agreement to submit a labor dispute to arbitration. The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract *the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board.*" (Emphasis supplied)

Previous to the 1st session of the 80th Congress, decisions that any field in labor relations had been preempted were limited to conduct protected by sec. 7 or made an unfair practice under sec. 8. Congress must have been aware of these decisions, so that its refusal to include contract violations in the unfair practice definition was a declination to preempt the subject matter.

B. The Conference Reports Recommending Adoption of Sec. 301 Indicated a Congressional Desire to Expand, Rather than to Restrict, Means of Enforcement of Collective Bargaining Contracts

The philosophy underlying legislation to provide adequate means of enforcing collective bargaining contracts is summarized in the following statement of former President Truman quoted in Senate Report 105, 80th Cong. 1st Session, 1 Legislative History of the Labor Management Relations Act 1947, 422:

" 'We shall have to find methods not only of peaceful negotiations of labor contracts, but also of insuring industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner

agreed upon by the parties. If we expect confidence in agreements made, there must be responsibility and integrity on both sides in carrying them out.'"

It was to implement a more effective enforcement of collective bargaining contracts by providing an *additional* remedy that sec. 301 was enacted, as indicated in the following excerpts from Congressional reports.

House Report 245 on H.R. 3020, 80th Cong., 1st Session, 1 Legislative History of the Labor Management Relations Act 1947, 337:

"When labor organizations make contracts with employers, such organizations should be *subject to the same judicial remedies and processes in respect of proceedings involving violations* (Emphasis supplied)

Senate Report 105 on S 1126, 80th Cong., 1st session, 1 Legislative History of the Labor Management Relations Act 1947, 423, after discussing the then existing limitations to obtaining judicial remedies for violations of contracts between employers and labor organizations, summarized:

"It is apparent that until *all jurisdictions*, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective-bargaining agreements. * * *" (Emphasis supplied)

In debate after the veto of the bill, the Honorable Joseph H. Ball stated the effect of the provisions relating to suits against labor organizaions, 2 Legislative History of the Labor Management Relations Act 1947, 1627:

"The President says the law would expose unions to suits for acts of violence, wildcat strikes, and other actions, none of which were authorized or ratified by them. This is not so. We have simply provided that unions are *subject to the same general laws or agency as any other corporation or citizen* in determining their liability for the acts of the agents." (Emphasis supplied)

Similarly, Senator Robert A. Taft stated in 2 Legislative History of the Labor Management Relations Act 1947, 1654:

"* * * Some of the provisions of this bill deal with the question of making the unions responsible. There is no reason in the world why a union should not have the *same responsibility that a corporation has which is engaged in business.* So we have provided that a union may be sued *as if it were a corporation.* * * *" (Emphasis supplied)

C. The Expressed Opinions on Which the House Adopted the Act Were to the Effect that it Would not Interfere with Administration of State Laws

The debates on adoption of the conference report included express reassurance that the bill would not interfere with laws of states. In response to a question by Mr. Kersten of Wisconsin, Mr. Hartley, co-author of the bill, responded as follows: (See 1 Legislative History of the Labor Management Relations Act 1947, 883):

"* * * I would like to ask the gentleman about that portion which pertains to the validity of State laws. Wisconsin and other States have their own labor relations laws. We are very anxious that disputes be settled at the State level insofar as it is possible. Can the gentleman give us assurance on that proposition, so that it is a matter of record, that that is the sense of the language and of the report?

"MR. HARTLEY. That is the sense of the language of the bill and of the report. That is my interpretation of the bill, that this will not interfere with the State of Wisconsin in the administration of its own laws. In other words, this will not interfere with the validity of the laws within that State.

"MR. KERSTEN of Wisconsin. And *it will permit as many of these disputes to be settled at the State level as possible?*

"MR. HARTLEY. *Exactly.*" (Emphasis supplied)

IV

OUSTER OF JURISDICTION OF STATE TRIBUNALS WOULD BE INCONSISTENT WITH THE CONGRESSIONAL PURPOSE TO INCREASE EXPEDITIOUS REMEDIES FOR ENFORCEMENT OF COLLECTIVE BARGAINING CONTRACTS

One of the underlying purposes of federal regulation of labor relations is to encourage agreements through collective bargaining, as a substitute for the types of economic pressure tending to interfere with the uninterrupted production of goods and services in which the public has a stake. As pointed out by former President Truman (see ante, p. 7-8), collective bargaining can serve its purpose only if such agreements are observed by both sides. Parties who are frustrated in their attempts to obtain prompt and effective means of enforcing their contracts are relegated to the economic warfare which the federal act seeks to avoid.

The purpose of Congress was to insure as fully as possible the observance of contracts by *augmenting* rather than *restricting* means of enforcement.

As pointed out in the Congressional reports, there were some jurisdictions in which procedure for enforcement of labor contracts was difficult, and the proposed legislation was intended to fill such partial void by making available an easier remedy. As stated by Senator Ball: (2 Leg. History of the Labor Management Relations Act 1947, 1497):

> "Fourth, we give to employers the right to sue a union in interstate commerce, in a Federal Court, for violation of contract. It does not go beyond that. As a matter of law, I think they have that right, now, but because unions are voluntary associations, the common law in a great many States requires service on every member of the union, which is very difficult; and, if a judgment is rendered, it holds every member liable for the judgment."

There were, however, many jurisdictions in which collective bargaining agreements were readily enforceable in state tribunals both by and against unions. In Wisconsin see, as a few examples:

Wisconsin Motor Corp. v. Wisconsin E. R. Board, (1956) 274 Wis. 85, 79 N.W. 2d 119;

Aluminum Goods Mfg. Co. v. Wisconsin E. R. Board, (1956) 271 Wis. 597, 74 N.W. 2d 154;

Dunphy Boat Corp. v. Wisconsin E. R. Board, (1954) 267 Wis. 316, 64 N. W. 2d 866;

Wisconsin E. R. Board v. Gateway Glass Co., (1953) 265 Wis. 114, 60 N. W. 2d 768;

International Union v. Wisconsin E. R. Board, (1951) 258 Wis. 481, 46 N. W. 2d 185;

Pabst Brewing Co. v. Wisconsin E. R. Board, (1948) 252 Wis. 346, 31 N. W. 2d 515;

Nash-Kelvinator Corp. v. Wisconsin E. R. Board, (1945) 247 Wis. 202, 19 N.W. 2d 255.

In the foregoing cases, there were settled promptly in state tribunals urgent disputes about provisions of collective bargaining contracts which might otherwise have been the subject of bitter economic warfare.

In all cases, the disputes were adjudicated far more expeditiously than could be done by usual procedures in federal court.*

Wisconsin, among other states, has provided an expeditious administrative remedy which can be handled without counsel, if desired, and can prevent the long, festering period of grievances which must await formal court trial. This may not be true in all states, but Congress surely did not mean to abolish expeditious remedies in state tribunals where they *are available*, and to require that injured parties resort to slower and more formalized procedure. Surely Congress intended to make it possible for every party whose rights have been infringed through violation of a collective bargaining contract to have an expeditious and effective remedy for his wrongs, and for him to choose the one most readily available to him.

The term "forum-shopping" has been brought into arguments as if it were something new and reprehensible. The possibility of "forum-shopping" has existed throughout the history of our constitutional government—in the fields of contracts and of torts among others, without undermining our dual system of government or working havoc in our system of economy.

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*As one of many examples there is pending in a federal district court of Wisconsin a suit on a collective bargaining contract which was filed more than two years ago and which has not even progressed to the stage of a pre-trial conference. *Winnebago Lodge #1947 of International Association of Machinists v. Kirkhaefer Aeronautic Motors, #58-C-272*, Eastern District of Wisconsin.

Is not the right to "forum-shop" for the fastest and best remedy exactly what Congress intended should be available to parties whose rights have been violated by breach of a collective bargaining agreement? Congress wished to assure an effective means of enforcement for all such parties, in order to avoid industrial clashes.

It is the need for quick determination of sore differences which has led to the submission of thousands of disputes to arbitration. Certainly there is no prevailing uniformity in arbitration awards, but is equally certain Congress did not intend to preclude arbitration because of the possibility of different awards in similar cases.

Where states do not provide adequate procedure, Congress intended to open federal courts to litigants. Where states provide a procedure preferable to a party whose contractual rights have been transgressed, surely Congress did not intend to deny the preferred remedy and relegate that party to one which he may deem slower, less readily available, or more expensive.

V.

THERE IS NO POTENTIAL CONFLICT IN ENFORCEMENT OF COLLECTIVE BARGAINING CONTRACTS BY FEDERAL AND STATE TRIBUNALS WHICH WOULD FRUSTRATE CONGRESSIONAL OBJECTIVES.

A. This Court Has Held that Congress Left Jurisdiction to States as to Conduct Neither Protected by Sec. 7 or Made an Unfair Practice Under sec. 8

This court has pointed out in *Garner v. Teamsters Union*, (1953) 346 U.S. 485, 488, 74 S. Ct. 161, 98 L. ed. 228, that the legislation now before the court "leaves much to the states."

In the case of *United Workers v. Laburnum Corp.*, (1954) 347 U. S. 656, 74 S. Ct. 833, 837, 838, 98 L. ed. 1025, where the United States Supreme Court denied the contention of the petitioners that "the Act of 1947 has occupied the labor relations field so completely that no regulatory agency other than the National Labor Relations Board and no court may assert jurisdiction over unfair labor practices as defined by it, unless expressly authorized by Congress to do so," the court said:

> "* * * The care we took in the Garner case to demonstrate the existing conflict between state and federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived. * * *"

The potential conflict by reason of which states have been held to be ousted of jurisdiction has always heretofore been related to the administrative power of the single centralized agency designated by Congress to carry out Congressional policies—the National Labor Relations Board. The court explained

that point of view in *La Crosse Telephone Corp. v. Wisconsin Employ. Rel. Bd.*, (1949) 336 U. S. 18, 69 S. Ct. 379, 93 L. ed. 463:

> "We went on to point out that the National Board had jurisdiction of the industry in which those particular employers were engaged and had asserted control of their labor relations in general. Both the state and the federal statutes had laid hold of the same relationship and had provided different standards for its regulation. Since the employers in question were subject to regulation by the National Board, we thought the situation too fraught with potential conflict to permit the intrusion of the state agency, even though the National Board had not acted in the particular cases before us."

The court later defined the area of potential conflict in the third *Garmon case* (*San Diego Building Trades Council, etc. v. Garmon,* (1959) 359 U. S. 236, 79 S. Ct. 773, 3 L. ed. 2d 775, as that in which activities are "arguably protected by section 7 of the National Labor Relations Act or constitute an unfair practice under §8." In such cases that question must "be left in the first instance to the National Labor Relations Board."

B. Violation of Collective Bargaining Contracts is Neither Protected by Sec. 7 nor Made an Unfair Practice Under Sec. 8

Certainly it cannot be argued that violation of a collective bargaining contract is "protected by §7." It is equally clear that Congress deliberately refused to make such violation "an unfair practice under sec. 8."

C. If Congress Had Intended Absolute Uniformity of Results in Each Case, it Would have Provided for Jurisdiction in a Single National Agency Instead of in Several Hundred Courts

Congress has not designated a specialized agency such as the National Labor Relations Board to prescribe a uniform national policy to control proceedings for enforcement of contracts. The exclusive authority of the National Labor Relations Board has been the basis for decisions denying jurisdiction not only of state tribunals, but also of federal courts.

Instead of making a contract violation an unfair practice to be dealt with exclusively by the National Labor Relations Board, Congress conferred remedial jurisdiction upon several hundred federal tribunals. History of jurisprudence shows that among those tribunals there is as much conflict as among any other group of tribunals.

Even though federal substantive law is applicable, there is as much room for conflict among federal district courts as among state tribunals. The lack of uniformity in the many federal districts in application of federal law is illustrated by the Pilot Institute on Sentencing reported in 26 FRD 231 et seq., in which the explanation of the objectives of the institute included the following statement made by Attorney General Cummings in 1938:

> "My studies of the disposition of criminal cases in several courts have led me to the conclusion that there frequently occur wide disparities and great inequities in sentences imposed in different districts, and even by different judges in the same district for identical offenses involving similar states of fact."

If such disparity is possible where federal substantive law is defined by statute, even greater disparity is likely where it has not been fully defined by Congress.

If substantive federal law is developed, state tribunals are as much obligated to apply it as are federal tribunals; and if any litigant is denied a right guaranteed him by federal law he is as free to seek redress by appeal from state tribunals as from federal tribunals.*

D. The Federal Rights Here Involved Were Not Newly "created" By Congress, Nor did Congress Provide a Special Remedy as it Did for Unfair Practices

It is conceded that if the right were one created by a Congressional enactment by which a specific remedy were also provided, there might be a basis for inferring a Congressional intent that the remedy should be exclusive. That is not the situation here.

In the first place, the right to enter an enforceable collective bargaining contract was not "created" by Congressional enactment. As this court pointed out in *Amalgamated Utility Workers v. Consol. Edison Co.*, (1940) 309 U.S. 261, 263, 84 L. ed. 738, 60 S. Ct. 561:

*Hill v. State of Florida, (1945) 325 U. S. 538, 65 S. Ct. 1373, 89 L. ed. 1782; Garner v. Teamsters Union, (1953) 346 U. S. 485, 74 S. Ct. 161, 98 L. ed. 228; San Diego Building Trades Council v. Garman, (1957) 353 U.S. 26, 77 S. Ct. 607, 598, 1 L. ed. 2d 601; International Union etc. v. O'Brien (1950) 339 U.S. 454, 70 S. Ct. 781, 94 L. ed. 978; Wisconsin E. R. Board v. Plankinton Packing Co. (1950) 338 U.S. 953, 70 S. Ct. 491, 94 L. ed. 588; Wisconsin E. R. Board v. Milwaukee G. L. Co., (1950) 258 Wis. 1, 44 N.W. 2d 547; Wisconsin E. R. Board v. Amalgamated Asso., (1950) 257 Wis. 43, 42 N. W. 2d 471; International Union v. Wisconsin E. R. Board, (1951) 258 Wis. 481, 46 N. W. 2d 185.

"Neither this provision, nor any other provision of the Act, can properly be said to have 'created' the right of self-organization or of collective bargaining * * *. In *National Labor Relations Board v. Jones & McLaughlin Steel Corp.*, 311 U. S. 1, 33, 34, we observed that this right is a fundamental one; that employees 'have as clear a right to organize and select their representatives for lawful purposes' as the employer has 'to organize its business and select its own officers and agents' * * *"

Further, the National Labor Relations Act, which originally guaranteed the right of collective bargaining, provided no specific remedy for violation of contracts. The use of a federal court for enforcement of collective bargaining contracts was later authorized by the Taft-Hartley Act to enable the courts to deal with such cases under the usual judicial procedures. Congress made no effort to establish a detailed, specific remedy comparable to that before the National Labor Relations Board.

When a right is not "created" solely by federal statute, but previously existed in most jurisdictions, opening the doors of federal courts carries no implication of an intent to deny other remedies. Indeed, there would be no such implication even with respect to a federally created right, since state tribunals have historically furthered Congressional policies through enforcement of federal rights.

E. State Courts Have Always Had the Duty to Enforce Federal Substantive Law in Appropriate Cases

This court held in *Textile Workers Union v. Lincoln Mills of Ala.*, (1957) 353 U. S. 448, 1 L. ed. 2d 972, 77 St. Ct. 912, that federal courts must develop a substantive federal law with respect to enforcement of collective bargaining contracts. The need

for application of federal substantive law is no obstacle to jurisdiction of state tribunals.

The rule is summarized in 14 Am. Jur. 441, that:

> "* * * In regard to state courts the law is also said to be settled that courts of general jurisdiction therein have power to decide cases involving the rights of litigants under the constitution or statutes of the United States unless deprived of the right so to do by the terms of the Federal Constitution or acts of Congress."

One of the leading decisions expounding the foregoing rule is in *Second Employers Liability Cases,* (1912) 223 U. S. 1, 56-59, 56 L. ed. 327, 32 S. Ct. 169, 38 L.R.A. (n.s.) 44, which held that rights arising solely under Congressional acts could, as of right, be enforced in state tribunals having adequate jurisdiction under state law. Much of the reasoning of that case is equally appropriate here:

> "* * * we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. * * *
>
> "The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for

all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. * * *

"'* * * The fact that a state court derives its existence and functions from the state laws is no reason why it should not afford relief; *because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the state laws.* The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent . . .'

"We are not disposed to believe that the exercise of jurisdiction by the state courts will be attended by any appreciable inconvenience or confusion; but, be this as it may, it affords no reason for declining a jurisdiction conferred by law. The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication. Besides, it is neither new nor unusual in judicial proceedings to apply different rules of law to different situations and subjects, even although possessing some elements of similarity, as where the liability of a public carrier for personal injuries turns upon whether the injured person was a passenger, an employe or a stranger. But it never has been supposed that courts are at liberty to decline cognizance of cases of a particular class merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.

"We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion." (Emphasis supplied)

See, also, *State of Missouri v. Taylor,* (1934) 266 U. S. 200, 69 L. ed. 247, 45 S. Ct. 47, 42 A.L.R. 1232.

VI

STATE COURT DECISIONS INDICATE A PRESSING NEED FOR REMEDIES IN LOCAL AS WELL AS IN FEDERAL TRIBUNALS TO ATTAIN THE OBJECTIVES OF COLLECTIVE BARGAINING.

State courts have uniformly held that jurisdiction of local tribunals to grant remedies for contract violations is not abolished by sec. 301 of the Labor Management Relations Act, 1947. While state court decisions are in no way controlling upon this court, the frequency with which litigants resort to state courts and the unanimity of opinion of such courts exemplifies the urgency of the need for as many and as convenient tribunals as possible to resolve disputes.

The following is a partial list of decisions of state appellate courts in which it has been held that sec. 301 does not abolish jurisdiction of state tribunals:

McCarroll v. Los Angeles County Dist. Coun. of Car., (1957) 315 P. 2d 322, 49 Cal. 2d 45, cert. denied 355 U.S. 932;

Connecticut Company v. Division 425, etc. (1960) 164 A. 2d 413, 147 Conn. 608;

Coleman Company v. International Union, etc., (1957) 317 P. 2d 831, 181 Kan. 969, 973-974;

Courtney v. Charles Dowd Box Co., (1960) 169 N.E. 2d 885, ___ Mass. ___;

McLean Distrib. Co. v. Brewery & Bev. Drivers, etc., (1959) 94 N. W. 2d 514, 521, 254 Minn. 204;

Miller v. Kansas City Power & Light Co., (1960) 332 S. W. 2d 18, ___ Mo. ___;

General Electric Co. v. International Union, (1952) 108 N.E. 2d 211, 93 Ohio App. 139, 153-156, appeal dismissed 158 Ohio St. 555;

International Longshoreman's Assn. v. Harvey Aluminum, (1961) 359 P. 2d 112, ___ Ore. ___;

Springer v. Power Tool Corp., (1960) 348 P. 2d 1112, 220 Ore. 102;

Anchor Motor Freight N.Y. Corp. v. Local Union #445, (1958) 171 N.Y.S. 2d 511, 5 A.D. 2d 869;

Steinberg v. Mendel, etc., (1957) 9 Misc. 2d 611, 167 N.Y.S. 2d 685;

Philadelphia Marine Trade Assn. v. International Longshoreman's Assn., (1955) 115 A. 2d 419, 382 Pa. 326, 332-333;

General Bldg. Contractors' Assn. v. Local Union #542, (1952) 87 A. 2d 250, 254, 370 Pa. 73, 79-80, 32 A.L.R. 2d 822;

Teamsters Local 174 v. Lucas Flour Co., (1960) 356 P. 2d 1, ___ Wash. ___;

Clark v. Hein-Werner Corp., (1959) 99 N.W. 2d 32, 100 N.W. 2d 317, 8 Wis. 2d 264.

In the case of *McCarroll v. Los Angeles County, etc. Carpenters, supra,* the court said: (*loc. cit.* 49 Cal. 2d 45, 59)

"It does not necessarily follow from a decision that federal law governs the rights of the parties that state courts are ousted of jurisdiction to enforce those rights. As Mr. Justice Bradley stated in *Claflin v. Houseman,* 93 U.S. 130, 136 [23 L.Ed. 833], '[I]f exclusive jurisdiction [in the federal courts] be neither express nor implied, the State courts have concurrent jurisdiction [to enforce federal rights] whenever by their own constitution, they are competent to take it.' Concurrent jurisdiction exists 'where it is not excluded by express provision, or by incompatibility in its exercise arising from the nature of the particular case.' (See *Gerry of California v. Superior Court,* 32 Cal.2d 119, 122-123 [194 P.2d 689].)

"Section 301 does not expressly exclude state courts. On the contrary, it merely declares that an action for breach of a collective bargaining agreement may be brought in a federal court. Surely if Congress had intended to exclude state courts it would have used more forthright language. Nor does enforcement of collective bargaining agreements in state courts conflict with any federal policy embodied in section 301 or any other part of the federal statute. Defendants contend that the rationale of *Garner v. Teamsters etc. Union,* 346 U.S. 485 [74 S.Ct. 161, 98 L.Ed. 228], and *Weber v. Anheuser-Busch, Inc.,* 348 U.S. 468 [75 S.Ct. 480, 99 L.Ed. 546], which excludes state court jurisdiction over unfair labor practices in order that the National Labor Relations Board may be free to develop a consistent federal policy, applies equally to exclude state court jurisdiction over actions that could be brought under section 301. Section 301, however, does not confide jurisdiction to one expert tribunal for the development of federal policy, but on the contrary gives jurisdiction to all the federal district courts. The possibility of conflict between state and federal courts is no greater than the possibility of conflict among the federal courts themselves, with uniformity ultimately dependent in either case on review by the United States Supreme Court. Moreover, federal courts are no more expert than state courts in the interpretation of contracts."

For each case such as those above cited, which reaches an appellate court on a jurisdictional challenge, there are many others in which no such challenge is made or in which determinations of trial courts are not appealed. The frequency with which litigants resort to state, as well as to federal, tribunals indicates that the parties whose rights have been infringed recognize the need for both federal and state tribunals to settle the disputes which might otherwise explode into industrial warfare.

There can no longer be any question that federal courts have authority to develop and apply a substantive national law in cases brought before them by parties to collective bargaining contracts. To impose on federal courts alone the duty to handle all such litigation would create an overwhelming responsibility which could be alleviated substantially by assistance of other tribunals under obligation to apply the same substantive law.

CONCLUSION

It is not primarily the interests of governmental tribunals nor the rights of states which motivate this brief; it is the need of the parties to collective bargaining contracts to avail themselves of the nearest, most convenient, and most expeditious tribunal in order to serve the national purpose of having disputes resolved through "processes of justice" instead of "the more primitive methods of trial by combat."

Respectfully submitted

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No. 33

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

CHARLES DOWD BOX CO., INC.,

Petitioner,

v.

JOHN F. COURTNEY, *et al*, as they fairly represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF FOR RESPONDENTS

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---

*ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS**

BRIEF FOR RESPONDENTS

STATEMENT OF THE CASE

The United Steelworkers of America, an international labor organization (hereinafter referred to as the union), was the collective bargaining representative of the production and maintenance employees of Charles Dowd Box Company, the petitioner herein, during all times relevant to this

---

* We so caption the case since certiorari was sought and granted to the Superior Court. 365 U.S. 809. It is clear, however, that it is the judgment of the Supreme Judicial Court of Massachusetts which is being reviewed. In the light of *Cole v. Violette*, 319 U.S. 581 (1943), it may be that the petition should have requested certiorari to that court. *But cf. Testa* v. *Katt*, 330 U.S. 386 (1947). In any event, the petition was timely (R. 68, 73).

case. Local 5158 was the union's local affiliate in which petitioner's employees were organized.

A collective bargaining agreement between the union and the company was executed in June, 1955, and expired according to its terms on May 18, 1957. (R. 45).

In the early part of 1957 the union submitted to the company certain proposals for a new agreement. Thereupon, negotiations were commenced between the respective negotiating committees of the parties. After a number of negotiating sessions, a "Stipulation" was signed on May 21, in which the parties agreed to extend their prior agreement to November 19, 1958, with the following changes:

"1. 13 cents wage increase
2. One additional holiday
3. Elimination of the rate range within 90 days
4. Vacations to be computed on an anniversary basis." (R. 6).

This Stipulation was signed on behalf of the union by the president of the Local and a staff representative of the International, who were the two ranking members of the union negotiating committee, and for the company by David Dowd, who was a member of the company's negotiating team as well as Vice President in charge of production, a member of the Board of Directors and one of the company's four principal stockholders. (R. 45). It was ratified by the members of the Local that evening. (R. 46).

On May 28 a meeting was held between representatives of the respective negotiating committees at which the final language of the new agreement was drafted. (R. 46). That same day, the company posted a notice at the plant announcing that the "newly negotiated wage increases" would be paid beginning June 7, and would be applied retroactively as of May 20. (R. 7).

On June 5, another notice was posted by the company, stating the following:

> "Although the Contract has not yet been presented for review and signature, to show good faith on the part of Management, the negotiated increase of thirteen (13) cents will be included in this week's pay.
>
> "After the Contract has been formally signed, the increase for the prior weeks will be retroactive." (R. 54).

Shortly thereafter, the company put the terms of the new agreement into effect. It paid the wage increases retroactive to May 20, and it honored all the other provisions as well. (R. 46).

On August 2, David Dowd signed and delivered a copy of the completed agreement to the union. It was signed by the Local Union officers on August 12, and then sent on to the International officers for their signature. (R. 46).

On August 12, Courtney, the president of the Local, was informed by a company representative that David Dowd no longer had anything to do with labor relations. (R. 46). The company continued to honor the agreement, however, and, indeed, on August 19 Mary Dowd, the president of the company, met with union officials and worked out certain details pertaining to the implementation of the portion of the agreement dealing with the elimination of "rate ranges." (R. 46).

On August 30, 1957, the company posted the following notice:

> "As indicated in the notice of June 5th, that Management had not signed the proposed contract, but willingly made wage adjustments to show good faith until final clarification of the provisions of the contract were mutually understood.
>
> "We regret to advise at this time, that Management is not in full agreement with the provisions of the in-

strument as proposed and will not make further adjustments until mutually agreed upon between the Company and the Union." (R. 55).

This was followed by another notice on September 4, in which the company announced that it was returning "to the rates in effect as of May 18, 1957." (R. 39-40).

On September 9, the present action was commenced. A bill in equity was filed by the Local Union officers and one staff representative of the International Union in the Superior Court of the Commonwealth of Massachusetts in and for Worcester County. The complaint (R. 1) alleged that the plaintiffs "fairly and adequately represent the interests of the entire membership" of the Local and the International, and after setting forth essentially, the facts described above asked that the court declare the agreement valid and binding, enjoin the company from terminating or violating it, and require the company to account to the employees for all money due them.

On September 17, the company filed a Demurrer and Answer to the complaint (R. 40) in which it raised, in addition to other defenses, the contention that the court lacked jurisdiction because Section 301 of the Labor Management Relations Act conferred exclusive jurisdiction over actions to enforce collective bargaining agreements on the federal courts. The court overruled the demurrer (R. 44) and referred the case to trial before a Master.

The Master's Report (R. 45), after an extensive review of the evidence, found that the company's negotiating committee had both actual and apparent authority to negotiate an agreement with the union, and that the agreement which had been reached, drafted, ratified, executed, and implemented was binding on the company.

The court overruled the company's objections to the Master's Report and motion to dismiss for lack of jurisdiction. It entered a decree adjudging the agreement "valid and binding on the parties thereto," and awarding back pay

to each of the members of the class represented by the plaintiffs in accordance with a stipulation entered into by the parties. (R. 58).

On appeal, the decision was affirmed by the Supreme Judicial Court of Massachusetts. On the question of jurisdiction, the court held:

> "We do not accept the contention that State courts are without jurisdiction. The statute does not so declare. The conferring of jurisdiction in actions at law upon the appropriate District Courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction both at law and in equity in State courts. The case principally relied upon, *Textile Wkrs.* v. *Lincoln Mills,* 353 U.S. 448, does not so state. In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction has been made exclusive, we shall not make what would be tantamount to the abdication of the hitherto undoubted jurisdiction of our own courts. . . ." (R. 69-70).

The company filed its petition for certiorari in this Court on January 9, 1961. The sole question raised in that petition was "whether Congress, in enacting the Labor Management Relations Act of 1947 . . . pre-empted to the exclusive jurisdiction of the federal courts that field of litigation involving violations of collective bargaining agreements when interstate commerce would be affected thereby. . . ." (pet. for cert. 2). Certiorari was granted on February 20, 1961. 365 U.S. 809.

SUMMARY OF ARGUMENT

I—The sole question in this case is whether state courts have jurisdiction over actions to enforce collective bargaining agreements which could also be enforced in federal court under § 301, not what law is applicable in such cases. It is clear that the same substantive law must govern re-

gardless of the court in which the case is tried, and this Court has held that "the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456 (1957).

From the earliest days of the Republic, state courts have had concurrent jurisdiction to entertain federal causes of action and to enforce federal rights. While Congress has the power to confer exclusive jurisdiction on the federal courts, this power has been sparingly exercised. When Congress intends to create exclusive federal jurisdiction it ordinarily does so expressly. In the absence of such an express provision, it is generally presumed that a statute creating federal court jurisdiction does not divest state courts of their traditional concurrent jurisdiction.

II—Nothing in the language, history, or purpose of § 301 indicates any intention to preclude state courts from taking jurisdiction over actions to enforce collective bargaining agreements. On its face, the statute simply confers jurisdiction on the federal courts, without any suggestion that such jurisdiction is to be exclusive. The purposes of § 301, as reflected in the legislative history, were to make collective agreements "valid, binding and enforceable," to provide a forum in which unions could sue and be sued as entities without the common law impediments to suits by or against unincorporated associations, and to assure that collective agreements would be interpreted and enforced in accordance with federal labor policy. Implementation of these purposes does not require divesting the state courts of jurisdiction, and there is no basis for assuming that Congress intended to do so.

The cases holding that neither state nor federal courts may act in the area over which the NLRB has jurisdiction are not relevant to the issue in the present case. As to that area, "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply

law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal . . ." *Garner* v. *Teamsters Union*, 346 U.S. 485, 490 (1953). But Congress specifically decided not to make the violation of a collective agreement an unfair labor practice, and decided instead to leave such matters to "the usual processes of the law and not to the National Labor Relations Board." H. Conf. Rep. No. 510, 80th Cong., 1st Sess. p. 42 (1947).

To hold that state courts have concurrent jurisdiction would not lead to conflicting results or forum shopping so long as state courts are required to apply federal law and federal policy. If this Court holds, for example, as we believe it should, that the Norris-LaGuardia Act precludes the issuance of an injunction against a strike in an action brought in federal court under § 301, the same limitation would have to be applied if such an action were brought in state court. While Norris-LaGuardia in terms only limits the jurisdiction of the federal courts, it also embodies a basic element of substantive federal labor policy which the state courts would be obliged to follow.

In short, the Congressional intention to make federal labor policy applicable in actions to enforce collective bargaining agreements does not require a holding that federal jurisdiction under § 301 is exclusive. It simply requires that state courts adhere to federal policy in any action which could have been brought in federal court under § 301.

III—The issues involved in No. 50, *Local 174, Teamsters* v. *Lucas Flour Co.*, which is scheduled for argument together with the present case, are related to, but distinct from, those involved here. In that case, no question was raised as to the state court's jurisdiction over the breach of contract claim. The sole question presented is whether the substantive principles applied by the court in deciding that claim were erroneous as a matter of federal law.

ARGUMENT

I—EXCEPT IN THOSE AREAS WHERE CONGRESS HAS SPECIFICALLY PROVIDED THAT THE FEDERAL COURTS SHALL HAVE EXCLUSIVE JURISDICTION, STATE COURTS HAVE ALWAYS HAD CONCURRENT JURISDICTION TO ENTERTAIN FEDERAL CAUSES OF ACTION AND ENFORCE FEDERAL RIGHTS

It is necessary, at the outset, to emphasize that the question in this case is whether state courts have concurrent jurisdiction with the federal courts of actions which come within the coverage of § 301 of the Labor Management Relations Act, not what law is applicable in such cases. The latter question was settled in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 (1957), in which this Court held that "the substantive law to apply in suits under §301(a) is federal law, which the courts must fashion from the policy of our national labor laws." 353 U.S. at 456. It follows necessarily from that decision that if state courts have jurisdiction over actions which could be brought in federal court under § 301, they must apply federal, not state, law. The rights and duties of the parties to any collective bargaining agreement must be determined in accordance with one, not two bodies of law, and under familiar principles federal law supersedes any state law dealing with the same subject matter.[1]

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[1] We assume, with Petitioner, that the federal right to enforcement of the collective bargaining agreement here could have been vindicated by a suit in a federal district court, despite the decision of this Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.*, 348 U.S. 437 (1955). The vitality of *Westinghouse* is doubtful in the light of this Court's decision in *Lincoln Mills*. There was no opinion of the Court in *Westinghouse*, and three of the six Justices who concurred in the result did so on grounds which were overruled in *Lincoln Mills*—that state, not federal, law was applicable in suits under Section 301 and that this gave rise to constitutional problems which could only be avoided by construing the statute narrowly. 348 U.S. 439 (opinion of Mr. Justice Frankfurter, concurred

Of course, this Court recognized in *Lincoln Mills* that "state law, if compatible with the purpose of §301, may be resorted to in order to find the rule that will best effectuate federal policy." But it also pointed out that "any state law applied . . . will be absorbed as federal law. . . ." Thus it is clear that state law, *qua* state law, has no bearing on collective bargaining agreements in industries affecting commerce. Those agreements are governed by federal law just as surely as if Congress had enacted a complete and detailed code governing their interpretation and enforcement.

We state these basic propositions not because they are in any way disputed in this case, but because we do not want our position to be misunderstood. We do not contend that state substantive law has any application to cases such as the one now before the court. We contend simply that Congress did not intend, when it authorized the enforcement of collective bargaining agreements in federal courts pursuant to federal law, to divest the state courts of concurrent jurisdiction to enforce those agreements pursuant to federal law.

From the earliest days of the Republic, state courts have entertained federal causes of action and enforced federal rights. While Congress has the power to confer exclusive jurisdiction on the federal courts, that power has been sparingly exercised.

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in by Justices Burton and Minton). These Justices indicated that if the constitutional difficulties were not present "we might be disposed to read Section 301 as allowing the union to sue in this case." 348 U.S. at 459. Since the constitutional difficulty has now been resolved, we believe the result in *Westinghouse* would no longer follow.

In any event, the suit here was not solely to enforce "uniquely personal rights" of individual employees, but to establish the validity of the entire collective bargaining agreement. We do not read *Westinghouse* as requiring, in such a situation, a severance of the personal rights of employees from the larger cause of action, which necessarily includes them. See *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). But see *United Steelworkers* v. *New Park Mining Co.*, 273 F. 2d 352 (10th Cir. 1959).

The first Judiciary Act of 1789 expressly defined the areas over which federal courts were to have exclusive jurisdiction, leaving all other federal court jurisdiction concurrent with the state courts. 1 Stat. 73. Moreover, state courts had—and still have—exclusive jurisdiction over actions based on federal law over which the federal courts simply have not been given jurisdiction. The Judiciary Act of 1789 did not establish any general jurisdiction in the federal courts over actions arising under the laws of the United States, and even today such jurisdiction only exists if the amount in controversy exceeds $10,000. 28 U.S.C. § 1331. Thus, there have always been, and still are, federal rights which not only are enforceable in the state courts, but are enforceable *solely* in state courts.

In No. 82 of the Federalist Papers, Hamilton, in discussing the relationship between state and federal courts, begins with the premise that the Constitution was not intended to take away the pre-existing jurisdiction of state courts. He then goes on to state the following:

> "But this doctrine of concurrent jurisdiction is only clearly applicable to those descriptions of causes, of which the state courts have previous cognizance. It is not equally evident in relation to cases which may grow out of, and be *peculiar* to, the constitution to be established: For not to allow the state courts a right of jurisdiction in such cases can hardly be considered as the abridgement of a pre-existing authority. I mean not therefore to contend that the United States, in the course of legislation upon the objects entrusted to their direction, may not commit the decision of causes arising upon a particular regulation, to the federal courts solely, if such a measure should be deemed expedient; but I hold that the state courts will be divested of no part of their primitive jurisdiction, further than may relate to an appeal; and I am even of opinion, that in every case in which they were not expressly excluded

by the future acts of the national legislature, they will, of course, take cognizance of the causes to which those acts may give birth. This I infer from the nature of judiciary power, and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases, lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we consider the state governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive, that the state courts would have a concurrent jurisdiction in all cases arising under the laws of the union, where it was not expressly prohibited."

Hamilton's analysis has been consistently followed by this Court. See *Houston* v. *Moore*, 5 Wheat. 1, 25-27 (1820); *Claflin* v. *Houseman*, 93 U.S. 130 (1876); *Robb* v. *Connolly*, 111 U.S. 624 (1884); *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239 (1942). As Mr. Justice Frankfurter stated in his concurring opinion in *Brown* v. *Gerdes*, 321 U.S. 178, 188 (1944):

"Since 1789, rights derived from federal law could be enforced in state courts unless Congress confined their enforcement to the federal courts. This has been so precisely for the same reason that rights created by the British Parliament or by the Legislature of Vermont could be enforced in New York courts. Neither Congress nor the British Parliament nor the Vermont Legislature has power to confer jurisdiction upon the New York courts. But the jurisdiction conferred upon them by the only authority that has power to create

them and to confer jurisdiction upon them—namely the law-making power of the State of New York—enables them to enforce rights no matter what the legislative source of the right may be. . . ."

Congress has, of course, conferred exclusive jurisdiction in the federal courts over certain specific kinds of actions. Although there are a few situations where exclusive jurisdiction has been held to be implied, *e.g.*, *General Investment Co.* v. *Lake Shore Mich. So. Ry.*, 260 U.S. 261 (1922) (Sherman and Clayton Acts), in most cases when Congress desires to create exclusive federal jurisdiction it does so expressly. *E.g.*, Securities Exchange Act, 15 U.S.C. § 78aa; Natural Gas Act, 15 U.S.C. § 717u; 28 U.S.C. § 1333 (admiralty and prize), § 1334 (bankruptcy), § 1338 (patent and copyright). Thus, in the absence of an express provision to the contrary, it is generally presumed that a statute creating federal court jurisdiction does not divest the concurrent jurisdiction of state courts. See Note, *Exclusive Jurisdiction of the Federal Courts in Private Civil Actions*, 70 Harv. L. Rev. 509 (1957).

General presumptions, of course, do not necessarily decide particular cases. In each case the answer must be given in terms of an interpretation of the particular jurisdictional statute involved. It is therefore necessary to examine the language, purpose, and legislative history of Section 301 to determine whether there is any basis for inferring a Congressional intention to make the jurisdiction of federal courts over actions to enforce collective bargaining agreements exclusive. To this inquiry we now turn.

II—NOTHING IN THE LANGUAGE, HISTORY, OR PURPOSE OF SECTION 301 PRECLUDES STATE COURTS FROM TAKING JURISDICTION OVER ACTIONS TO ENFORCE COLLECTIVE BARGAINING AGREEMENTS.

On its face, § 301 simply gives the federal district courts jurisdiction over "suits for violation of contracts between

an employer and a labor organization representing employees in an industry affecting commerce. . . ." It does not state or even suggest that such jurisdiction shall be exclusive.

Admittedly, the language itself is not necessarily controlling, although it is significant, as we have seen, that most statutes which confer exclusive jurisdiction on the federal courts expressly so state. The meaning of § 301, like any other statute, must be ascertained not only from its text but from its background and purpose.

While it is true, as petitioner points out and as this Court stated in *Lincoln Mills*, that the legislative history of § 301 is in many respects "cloudy and confusing," the basic purpose of the legislation is nevertheless quite clear. Having established a far-reaching and complex federal statute to encourage and regulate the process of collective bargaining, Congress believed it was also necessary to provide that the "bargain" itself, *i.e.*, the collective agreement, be "valid, binding and enforceable." In the words of the Senate Committee, "Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step." S. Rep. No. 105, 80th Cong., 1st Sess. p. 17 (1947). In the Senate Bill, this objective was to be realized by a provision making breach of a collective bargaining agreement an unfair labor practice subject to the jurisdiction of the National Labor Relations Board, S. 1126, 80th Cong., 1st Sess. §§ 8(a)(6), 8(b)(5), as well as a provision giving jurisdiction to enforce collective agreements to the federal courts. *Id.* § 301(a). In Conference, however, it was decided to make collective bargaining agreements enforceable only in the courts. "Once parties have made a collective bargaining contract," the Conference report stated, "the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. Conf. Rep. No. 510, 80th Cong., 1st Sess. p. 42 (1947).

One reason that Congress considered it necessary to give federal courts jurisdiction over actions to enforce collective agreements was the fact that in some states it is procedurally difficult to sue unincorporated associations. See, *e.g.*, 93 Cong. Rec. 3839 (statement of Senator Taft). Thus, in addition to the jurisdictional grant of § 301(a), Congress provided in § 301(b) that "any labor organization" could be sued in the federal courts "as an entity," and that judgments against labor organizations in the federal courts should be enforceable only against "the organization as an entity and against its assets. . . ."

The basic purposes of § 301, then, were to make collective agreements legally binding, to provide for their enforcement in accordance with "the usual processes of the law," and to eliminate the common law impediments to suing unions. Although there was no extensive discussion in Congress as to whether collective agreements were to be enforced in accordance with federal or state law, this Court quite correctly held in *Lincoln Mills* that the intention of Congress could only be properly carried out if § 301 is interpreted as requiring the application of federal substantive law, based on federal labor policy, in cases arising under it. In that sense, this was also part of the "intention" of Congress.

Petitioner's brief interprets the legislative history in much the same way. It states that "the entire legislative history of Section 301 indicates a desire on the part of Congress to have the parties to a collective bargaining agreement be bound by that agreement and to create a remedy to enforce obligations under that agreement," and that "Congress was aware of the lack of uniformity in state laws and desired to afford a uniform remedy available to all parties regardless of state affiliations, against violations of collective bargaining agreements. See H.R. Rep. No. 245, 80th Cong., First Sess., pp. 45-46." (Pet. Br. 11)

Implementation of these purposes simply does not re-

quire divesting the state courts of jurisdiction over actions to enforce collective bargaining agreements, and there is no evidence that Congress intended to do so. Whenever Congress establishes a federal right and gives jurisdiction to a federal court to enforce that right, the intention is to "afford a uniform remedy, available to all parties." Yet in most instances, as we have seen, Congress has not divested state court jurisdiction to enforce federal rights. On the contrary, it has been satisfied to give plaintiffs the right, if they choose, to bring suit in the federal court, defendants the right, if they are sued in state court, to remove to federal court (28 U.S.C. § 1441) and all parties the right to seek review in the Supreme Court of any adverse ruling by the highest court of the state. 28 U.S.C. § 1257(3). This is the normal pattern. What basis is there for the view that Congress intended to depart from it in the case of § 301?

Petitioner argues that federal court jurisdiction under § 301 should be considered exclusive for the same reasons that the jurisdiction of the National Labor Relations Board is exclusive in the areas where it has jurisdiction. The two situations, however, are not parallel. As this Court stated with respect to the matters over which the NLRB has been given jurisdiction:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and

attitudes toward labor controversies. . . ." *Garner* v. *Teamsters Union*, 346 U.S. 485, 490 (1953).

As to violations of collective bargaining agreements, however, Congress made a contrary decision. After considering making them an unfair labor practice subject to NLRB jurisdiction, Congress rejected that alternative in favor of leaving the enforcement of collective agreements "to the usual processes of the law." Thus the cases dealing with the exclusive jurisdiction of the NLRB are simply not relevant.[2]

Petitioner also argues that if the purpose of § 301 was to make collective agreements subject to a uniform federal law, as this Court held in *Lincoln Mills*, then it is necessary to hold that federal court jurisdiction is exclusive in order to carry out this intention. This argument, of course, could be applied with equal force to every situation in which the

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[2] In the final section of Petitioner's brief (pp. 21-26) it is argued that even if federal court jurisdiction under Section 301 is not exclusive in every case, it must be considered exclusive where the alleged breach of contract is also an unfair labor practice, and that this is such a case. The argument is based on the assumption that in the absence of § 301, any breach of contract suit involving conduct which is arguably an unfair labor practice would be within the exclusive jurisdiction of the NLRB, and that if § 301 creates an exception it is one which applies only to the federal courts.

The argument is untenable. It is well settled that neither federal nor state courts have jurisdiction to remedy unfair labor practices. But an obligation assumed by a party to a contract is completely separate and apart from an obligation imposed upon him by law, even though the same conduct may violate both. Thus, enforcement by a court of contract obligations does not interfere with the exclusive jurisdiction of the NLRB to remedy unfair labor practices, not because of any statutory "exception" to the exclusive jurisdiction of the NLRB, but simply because Congress decided to exclude the enforcement of contract obligations from the Board's jurisdiction.

In this connection, § 301 is to be contrasted with § 303, 29 U.S.C. § 187, which does create an exception to the Board's exclusive jurisdiction by allowing suits for damages for certain unfair labor practices. That Section specifically provides that such suits can be brought in federal court "or in any other court having juisdiction of the parties."

federal courts have jurisdiction to enforce federal law. In every area in which Congress has legislated, one of its objectives has been to establish a uniform body of law. Yet, as we have seen, Congress has permitted the overwhelming number of federally-created rights to be enforced either in federal courts or in state courts. The view that exclusive federal jurisdiction is necessary to maintain uniform federal law is therefore hardly one which can be attributed to Congress. And as Judge Traynor of the California Supreme Court stated, in rejecting precisely the argument made by Petitioner here:

> "The possibility of conflict between state and federal courts is no greater than the possibility of conflict among the federal courts themselves, with uniformity ultimately dependent in either case on review by the United States Supreme Court." *McCarroll* v. *Los Angeles Dist. Council of Carpenters,* 49 Cal. 2d 45, 315 P. 2d 322 (1957), *cert. denied,* 355 U.S. 932 (1958).

Virtually every court which has had occasion to consider the question has held that § 301 does not divest state courts of jurisdiction over actions to enforce collective bargaining agreements (See citations in opinion of court below, R. 70). Petitioner has been able to find only two opinions intimating to the contrary, neither of which constitutes a square holding on the issue. *Association of Westinghouse Employees* v. *Westinghouse Elec. Corp.,* 210 F. 2d 623, 629-30, at n. 16 (3d Cir. 1954) (stating that § 301 is "seemingly" exclusive); *International Plainfield Motor Co.* v. *Local 343, UAW,* 123 F. Supp. 683, 692 (D.N.J. 1954).[3]

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[3] Petitioner's reliance on *Fay* v. *American Cystoscope Makers,* 98 F. Supp. 278 (S. D. N. Y. 1951) is misplaced. By refusing to remand to the state court an action for breach of a collective agreement which had been removed by the defendant to federal court, *Fay* necessarily held that the state court from which the action was removed had concurrent jurisdiction, since it is well established that an action improperly brought in state court cannot be removed to a federal court. *Gen-*

Petitioner argues that permitting state courts to take jurisdiction would lead to anomalous results, pointing to *Swift & Co.* v. *United Packinghouse Workers*, 177 F. Supp. 511 (D. Colo. 1959) as an example. In that case, an action for damages and an injunction for breach of a no-strike clause in a collective bargaining agreement was brought in state court. The union removed the case to federal court. On motion to remand, the court refused to remand the claim for damages but remanded the claim for an injunction, on the ground that the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, deprived the federal court of jurisdiction to enjoin a strike.

This result is anomalous only if it is assumed that the state court, on remand, would be free to grant the injunction. We do not accept that assumption. There is presently pending before this Court the question of whether Norris-LaGuardia prevents federal courts from enjoining strikes in actions brought under § 301. *Chauffeurs Local 795* v. *Yellow Transit Freight Lines, Inc.* (This Term, No. 13). If the Court holds in that case, as we believe it should, that Norris-LaGuardia applies, it would seem to follow that state courts as well as federal courts should be prevented from enjoining strikes which are alleged to be in breach of a collective agreement. Although the Norris-LaGuardia Act in terms only limits the power of the federal courts, it also embodies a very basic and long established substantive federal policy against the use of injunctions in labor disputes. See *United States* v. *Hutcheson*, 312 U.S. 219 (1941). If federal substantive law, fashioned "from the policies of our national labor laws," is to be applied in state as well as federal courts, one element of that federal law must be the prohibition of injunctions against strikes. See *The Supreme Court, 1956 Term*, 71 Harv. L. Rev. 83, 178 (1957).

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eral Inv. Co. v. *Lake Shore & Mich. So. Ry.*, 260 U.S. 261, 288 (1922).

It is true that the question of remedy is generally considered "procedural" rather than "substantive." See *Pusey & Jones Co.* v. *Hanssen*, 261 U.S. 491 (1923). But this Court has long recognized that those categories have different meanings in different contexts:

> "Matters of 'substance' and matters of 'procedure' are much talked about in the books as though they defined a great divide cutting across the whole domain of law. But, of course, 'substance' and 'procedure' are the same keywords to very different problems. Neither 'substance' nor 'procedure' represents the same invariants. Each implies different variables depending upon the particular problem for which it is used. See *Home Ins. Co.* v. *Dick*, 281 U.S. 397, 409. And the different problems are only distantly related at best, for the terms are in common use in connection with situations turning on such different considerations as those that are relevant to questions pertaining to *ex post facto* legislation, the impairment of the obligations of contract, the enforcement of federal rights in the State courts and the multitudinous phases of the conflict of laws. . . ." *Guaranty Trust Co.* v. *York*, 326 U.S. 99, 108 (1945).

If § 301 was intended to make federal labor policy applicable to actions for breach of a collective agreement, then it must follow that the federal policy against enjoining strikes must apply in those actions, whether brought in state or in federal court.

The fallacy of petitioner's entire argument we submit, is the assumption that the only way to assure proper implementation of federal labor policy in actions for breach of collective bargaining agreements is to confine such actions to the federal court. There is simply no indication in the language or legislative history of § 301 to indicate that Congress shared this assumption.

Both federal and state courts, of course, make errors. But with proper guidance from this Court those errors can be minimized without depriving state courts of their traditional concurrent jurisdiction to enforce federal law.

III—THE RELATIONSHIP OF THIS CASE TO THE *LUCAS FLOUR CO.* CASE.

Since the Court has set this case for argument with *Local 174, Teamsters* v. *Lucas Flour Co.*, No. 50, we will comment briefly on the relationship between the issues involved in the two cases.

In *Lucas Flour*, an employer brought suit in a state court against a union for damages arising out of a strike. A judgment in favor of the plaintiff was affirmed in the Supreme Court of Washington on two alternative theories of liability: (1) that the strike constituted "tortious interference" with the plaintiff's business, and (2) that the strike violated the collective bargaining agreement in effect between the parties, even though the agreement did not contain a no-strike clause. The court appeared to rely on state substantive law for both theories, despite the fact that the enterprise involved was one subject to the Labor Management Relations Act.

As to the tort theory, the question presented is whether the conduct which the state court held to be wrongful is within the area regulated by the National Labor Relations Act and subject to the exclusive jurisdiction of the NLRB. This question does not bear on any issue of the present case.

As to the breach of contract claim, the only question presented is whether federal substantive law must be applied in any action which could be brought in a federal court under § 301, and if so whether the result reached below was erroneous as a matter of federal substantive law. The question of whether the jurisdiction of the federal courts is exclusive under § 301 was not raised.

Thus, the issues in the two cases are related but distinct. In the present case, the merits are not in issue, only the juris-

diction of the state court. In *Lucas Flour*, the jurisdiction of the state court over the breach of contract claim is not in issue, only the merits.

A decision upholding petitioner's contention in this case would require the reversal of *Lucas Flour* on jurisdictional grounds not presented by the petition in that case. A decision here affirming the judgment below would leave the issues presented and argued in *Lucas Flour* to be decided by the Court.

CONCLUSION

For the reasons stated, the judgment of the Supreme Judicial Court of Massachusetts should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 33.—October Term, 1961.

Charles Dowd Box Co., Inc., Petitioner, v. John F. Courtney, et al., etc. | On Writ of Certiorari to the Superior Court of Massachusetts.

[February 19, 1962.]

Mr. Justice Stewart delivered the opinion of the Court.

Section 301 (a) of the Labor Management Relations Act of 1947 provides:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." [1]

[1] The remaining provisions of § 301 are as follows:

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization

The sole question presented by this case is whether this federal statute operates to divest a state court of jurisdiction over a suit for violation of a contract between an employer and a labor organization.

The petitioner is an employer engaged in an industry affecting commerce as defined in the Labor Management Relations Act of 1947. The United Steelworkers of America, an international union, was the collective bargaining representative of the petitioner's production and maintenance employees, organized in Local 5158. A few weeks before the expiration of a collective bargaining agreement in 1957, negotiations were initiated between representatives of the union and of the petitioner with respect to proposals which the union had submitted for a new agreement. After a number of negotiating sessions, a "Stipulation" was signed by representatives of each party, continuing in effect many provisions of the old agreement, but providing for wage increases and making other changes with respect to holidays and vacations. The terms of the "Stipulation" were later embodied in a draft of a proposed new agreement. The petitioner originally announced to its employees that it would put into effect the wage changes and other provisions covered by the "Stipulation" and draft agreement, but a few weeks later notified its employees of its intention to terminate

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(1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." 29 U. S. C. § 185, 61 Stat. 156.

these changes and return "to the rates in effect as of May 18, 1957." It was the petitioner's position that its bargaining representatives had acted without authority in negotiating the new agreement, and that the union had been so advised before any contract had actually been concluded.

The present action was then brought in the Superior Court of Massachusetts for Worcester County by the respondents, local union officers and a staff representative of the International Union. The complaint alleged that the plaintiffs "fairly and adequately represent the interests of the entire membership" of the union and Local 5158, and asked for a judgment declaring that there existed a valid and binding collective bargaining agreement, for an order enjoining the company from terminating or violating it, and for an accounting and damages. Responding to the complaint, the petitioner interposed several defenses, among them the contention that, by reason of § 301 (a) of the Labor Management Relations Act, the state court had no jurisdiction over the controversy. The trial court rejected this attack upon its jurisdiction, determined on the merits that the collective bargaining agreement was "valid and binding on the parties thereto," and entered a money judgment in conformity with the wage provisions of the agreement.

The Supreme Judicial Court of Massachusetts affirmed, expressly ruling that § 301 (a) has not made the federal courts the exclusive arbiters of suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. As Chief Justice Wilkins put it, "We do not accept the contention that State courts are without jurisdiction. The statute does not so declare. The conferring of jurisdiction in actions at law upon the appropriate District Courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction both at law and in

equity in State courts. The case principally relied upon by the defendant, Textile Wkrs. Union of America v. Lincoln Mills, 353 U. S. 448, . . . does not so state. In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction has been made exclusive, we shall not make what would be tantamount to an abdication of the hitherto undoubted jurisdiction of our own courts." [2] Certiorari was granted to consider the important question of federal law thus presented. 365 U. S. 809. We agree with the Supreme Judicial Court of Massachusetts that the courts of that Commonwealth had jurisdiction in this case, and we accordingly affirm the judgment before us.

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[2] — Mass. —, —, 169 N. E. 2d 885, 887. As pointed out by the Massachusetts court, its view is in accord with other state court decisions. *McCarroll* v. *Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 57–60, 315 P. 2d 322, 328–330; *Connecticut Co.* v. *Division 425, Street & Electric Railway Workers*, 147 Conn. 608, 164 A. 2d 413; *Harbison-Walker Refractories Co.* v. *Local 702, United Brick & Clay Workers* (Ky. Ct. App.), 339 S. W. 2d 933; *Miller* v. *Kansas City Power & Light Co.* (Mo. App.), 332 S. W. 2d 18; *Anchor Motor Freight N. Y. Corp.* v. *Local 445, Teamsters Union*, 5 App. Div. 2d 869, 171 N. Y. S. 2d 511; *Steinberg* v. *Mendel Rosenzweig Fine Furs*, 9 Misc. 2d 611, 167 N. Y. S. 2d 685; *General Electric Co.* v. *United Auto Workers*, 93 Ohio App. 139, 153–156, 108 N. E. 2d 211, 220–223; *Local Lodge No. 774, Int'l Assn. of Machinists* v. *Cessna Aircraft Co.*, 186 Kan. 569, 352 P. 2d 420; *Local 8, Longshoremen's Union* v. *Harvey Aluminum*, — Ore. —, 359 P. 2d 112; *Springer* v. *Powder Power Tool Corp.*, 220 Ore. 102, 348 P. 2d 1112; *Philadelphia Marine Trade Assn.* v. *Local 1291, Longshoremen's Assn.*, 382 Pa. 326, 115 A. 2d 733; *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 57 Wash. 2d 95, 356 P. 2d 1; *Clark* v. *Hein-Werner Corp.*, 8 Wis. 2d 264, 99 N. W. 2. 132, 100 N. W. 2d 317. But at least two federal courts have expressed the view that their jurisdiction under § 301 (a) might be exclusive. *Association of Westinghouse Employees* v. *Westinghouse Elec. Corp.*, 210 F. 2d 623, 629–630, note 16, aff'd 348 U. S. 437; *International Plainfield Motor Co.* v. *Local 343, United Auto Workers*, 123 F. Supp. 683, 692 (D. N. J.).

It has not been argued, nor could it be, that § 301 (a) speaks in terms of exclusivity of federal court jurisdiction over controversies within the statute's purview. On its face § 301 (a) simply gives the federal district courts jurisdiction over suits for violation of certain specified types of contracts. The statute does not state nor even suggest that such jurisdiction shall be exclusive. It provides that suits of the kind described "may" be brought in the federal district courts, not that they must be.

The petitioner points out, however, that this Court held in *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448, that § 301 (a) is more than jurisdictional—that it authorizes federal courts to fashion, from the policy of our national labor laws, a body of federal law for the enforcement of agreements within its ambit. The Court recognized in that case that "state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy," but emphasized that "[a]ny state law applied . . . will be absorbed as federal law . . . ." 353 U. S., at 457.

It is argued that the rationale of *Lincoln Mills* would be frustrated if state courts were allowed to exercise concurrent jurisdiction over suits within the purview of § 301 (a). The task of formulating federal common law in this area of labor management relations must be entrusted exclusively to the federal courts, it is said, because participation by the state courts would lead to a disharmony incompatible with the *Lincoln Mills* concept of an all-embracing body of federal law. Only the federal judiciary, the argument goes, possesses both the familiarity with federal labor legislation and the monolithic judicial system necessary for the proper achievement of the creative task envisioned by *Lincoln Mills*. An analogy is drawn to our decisions which have recognized the necessity of withdrawing from the state courts

jurisdiction over controversies arguably subject to the jurisdiction of the National Labor Relations Board.[3]

Whatever the merits of this argument as a matter of policy, we find nothing to indicate that Congress adopted such a policy in enacting § 301. The legislative history of the enactment nowhere suggests that, contrary to the clear import of the statutory language, Congress intended in enacting § 301 (a) to deprive a party to a collective bargaining contract of the right to seek redress for its violation in an appropriate state tribunal.

We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule.[4] This Court's approach to the question of whether Congress has ousted state courts of jurisdiction was enunciated by Mr. Justice Bradley in *Claflin* v. *Houseman*, 93 U. S. 130, and has remained unmodified through the years. "The general question, whether State courts can exercise concurrent jurisdiction with the Federal courts in cases arising under the Constitution, laws, and treaties of the United States, has been elaborately discussed, both on the bench and in published treatises . . . [and] the result of these discussions has, in our judgment, been . . . to affirm the jurisdiction, where it is not excluded by express provision, or by incompatibility in its exercise arising

[3] See, *e. g.*, *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236.

[4] Indeed, Congress has so arranged the limited jurisdiction of federal courts that some federal laws can be enforced only in the state courts. See, *e. g.*, 28 U. S. C. § 1331, conferring jurisdiction upon federal courts of civil actions arising under the Constitution, laws, or treaties of the United States only if the matter in controversy exceeds the sum or value of $10,000.

from the nature of the particular case." 93 U. S., at 136. See *Robb* v. *Connolly*, 111 U. S. 624; *Second Employers' Liability Cases*, 223 U. S. 1, 56–59; *St. Louis, B. & M. R. Co.* v. *Taylor*, 266 U. S. 200; *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 245; *Brown* v. *Gerdes*, 321 U. S. 178, 188 (concurring opinion).[5] To hold that § 301 (a) operates to deprive the state courts of a substantial segment of their established jurisdiction over contract actions would thus be to disregard this consistent history of hospitable acceptance of concurrent jurisdiction.

Such a construction of § 301 (a) would also disregard the particularized history behind the enactment of that provision of the federal labor law. The legislative history makes clear that the basic purpose of § 301 (a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations. Moreover, there is explicit evidence that Congress expressly intended not to encroach upon the existing jurisdiction of the state courts.

The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301 (a) reflects congressional recognition of the vital importance of assuring the enforceability of such agreements.

The direct antecedent of § 301 was § 10 of the Case bill, H. R. 4908, 79th Cong., 2d Sess., which was passed

[5] See also *Houston* v. *Moore*, 5 Wheat. 1, 25–27, and see generally The Federalist No. 82 (Hamilton).

by both Houses of the Congress, but vetoed by the President in 1946. In conferring upon the federal district courts jurisdiction over suits upon contracts made by labor organizations, that section of the Case bill contained provisions substantially the same for present purposes as the provisions of § 301 at issue in this case.*

In considering these provisions of the proposed legislation in 1946, Congress manifested its complete awareness

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*"SEC. 10. (a) Suits for violation of a contract concluded as the result of collective bargaining between an employer and a labor organization if such contract affects commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: *Provided*, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena, or other legal process upon such officer or agent shall constitute service upon the labor organization.

"(d) Any employee who participates in a strike or other interference with the performance of an existing collective bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights for such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of sections 8, 9, and 10 of the National Labor Relations Act: *Provided*, That such loss of status for such employee shall cease if and when he is reemployed by such employer."

of both the existence and the limitations of state court remedies for violation of collective agreements. A principal motive behind the creation of federal jurisdiction in this field was the belief that the courts of many States could provide only imperfect relief because of rules of local law which made suits against labor organizations difficult or impossible, by reason of their status as unincorporated associations. The discussion between the supporters and opponents of this provision of the Case bill centered primarily on the nature and availability of existing state remedies. As a result, both factions collected and presented comprehensive data respecting the laws of the various States as to the status of labor organizations as legal entities. See, *e. g.*, S. Rep. No. 1177, 79th Cong., 2d Sess., Minority Report, pp. 10–14; 92 Cong. Rec. 5412–5415.

The bill which the Senate originally passed the following year contained a provision making a breach of a collective bargaining agreement an unfair labor practice subject to the jurisdiction of the National Labor Relations Board, S. 1126, 80th Cong., 1st Sess., §§ 8 (a)(6), 8 (b)(5), as well as a provision conferring jurisdiction upon the federal courts over suits for violation of collective agreements. In conference, however, it was decided to make collective bargaining agreements enforceable only in the courts. "Once parties have made a collective bargaining contract," the conference report stated, "the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 42.

The report which accompanied the bill passed by the House of Representatives in 1947 explicitly acknowledged that the proposed § 301 was a slightly recast version of § 10 of the Case bill. H. R. Rep. No. 245, 80th Cong., 1st

Sess., p. 45. The record of the congressional debates on § 301 of the 1947 Act reflects the same concern with the adequacy of the laws of the various States as had been expressed the previous year in the discussion of § 10 of the Case bill. The Minority Report in the House in 1947 again discussed the availability of relief, the alternative means of recovery, and the scope of remedy in suits against labor organizations under the laws of the various States. H. R. Rep. No. 245, 80th Cong., 1st Sess., pp. 108–109. The Senate Report reproduced verbatim the detailed analysis of state procedural law which had been contained in the Senate Minority Report on the 1946 legislation. S. Rep. No. 105, 80th Cong., 1st Sess., pp. 15–18.

The clear implication of the entire record of the congressional debates in both 1946 and 1947 is that the purpose of conferring jurisdiction upon the federal district courts was not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various States over contracts made by labor organizations. There seems to have been explicit mention of the question only once—in the Senate debate over § 10 of the 1946 bill. A spokesman for the bill, Senator Ferguson, stated unequivocally that state court jurisdiction would not be ousted by enactment of the federal law:

> "Mr. FERGUSON. Mr. President, there is nothing whatever in the now-being-considered amendment which takes away from the State courts all the present rights of the State courts to adjudicate the rights between parties in relation to labor agreements. The amendment merely says that the Federal courts shall have jurisdiction. It does not attempt to take away the jurisdiction of the State

courts, and the mere fact that the Senator and I disagree does not change the effect of the amendment.

"Mr. MURRAY. But it authorizes the employers to bring suit in the Federal courts, if they so desire.

"Mr. FERGUSON. That is correct. That is all it does. It takes away no jurisdiction of the State courts." 92 Cong. Rec. 5708.

Although the record of the 1947 debates contains no explicit statement of such precise relevance as Senator Ferguson's remarks in 1946, the entire tenor of the 1947 legislative history confirms that the purpose of § 301, like its counterpart in the Case bill, was to fill the gaps in the jurisdictional law of some of the States, not to abolish existing state court jurisdiction. For example, Senator Ball, one of the Floor Leaders for the bill, stated:

> "[W]e give to employers the right to sue a union in interstate commerce, in a Federal court, for violation of contract. It does not go beyond that. As a matter of law, I think they have that right, now, but because unions are voluntary associations, the common law in a great many States requires service on every member of the union, which is very difficult; . . ." 93 Cong. Rec. 5014.[7]

This basic purpose of § 301 is epitomized in the Senate Report: "It is apparent that until all jurisdictions, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective-bargaining agreements." S. Rep. No. 105, 80th Cong., 1st Sess., p. 17. It is obvious that Congress did not intend this remedial measure to destroy the foundation upon which it was built.

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[7] See also the remarks of Senator Smith, 93 Cong. Rec. 4281.

This Court, in holding that the Labor Management Relations Act of 1947 operates to withdraw from the jurisdiction of the States controversies arguably subject to the jurisdiction of the National Labor Relations Board, has delineated the specific considerations which led to that conclusion:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedure was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490.

By contrast, Congress expressly rejected that policy with respect to violations of collective bargaining agreements by rejecting the proposal that such violations be made unfair labor practices. Instead, Congress deliberately chose to leave the enforcement of collective agreements "to the usual processes of the law."

It is implicit in the choice Congress made that "diversities and conflicts" may occur, no less among the courts of the eleven federal circuits, than among the courts of the several States, as there evolves in this field of labor management relations that body of federal common law of which *Lincoln Mills* spoke. But this not necessarily unhealthy prospect is no more than the usual consequence

of the historic acceptance of concurrent state and federal jurisdiction over cases arising under federal law. To resolve and accommodate such diversities and conflicts is one of the traditional functions of this Court.[6]

Affirmed.

MR. JUSTICE BLACK concurs in the result.

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[6] In the course of argument at the Bar two questions were discussed which are not involved in this case, and upon which we expressly refrain from intimating any view—whether the Norris-LaGuardia Act might be applicable to a suit brought in a state court for violation of a contract made by a labor organization, and whether there might be impediments to the free removal to a federal court of such a suit. The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court. See *McCarroll* v. *Los Angeles Dist. Council of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322. For that matter, we have not yet ruled on the effect of Norris-LaGuardia upon the jurisdiction of *federal* courts in this area. Compare *Local 795, Teamsters Union* v. *Yellow Transit Freight Lines, Inc.*, 282 F. 2d 345, certiorari granted, 364 U. S. 931 (No. 13, Oct. Term 1961) with *Sinclair Ref. Co.* v. *Atkinson*, 290 F. 2d 312, certiorari granted, 368 U. S. 937 (No. 434, Oct. Term 1961). And quite obviously we have not yet considered the various problems concerning removal under 28 U. S. C. § 1441. See *Swift & Co.* v. *United Packinghouse Workers*, 177 F. Supp. 511; *Fay* v. *American Cystoscope Makers, Inc.*, 98 F. Supp. 278.